



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT NAKURU

CIVIL CASE NO. 140 OF 2009

MUTEGI KAREGA.....PLAINTIFF

VERSUS

JOSEPH KINYANJUI & HEADMASTER NJIHIA

*(for and on behalf of themselves and as trustees
for KARIMA PRIMARY SCHOOL).....*

.....DEFENDANT

FINAL ORDERS

In a judgment dated and delivered in this court on 21st May 2010, I found and held that the Plaintiff was the duly registered owner of the parcel of land known as Kijabe/Kijabe Block 1/4054 which had been illegally annexed and taken over by the schools now known as Karima Schools, comprising Primary and a Secondary School. I found that the schools had held the Plaintiff's land and denied him the use thereof for a period of 185 months (*from 29th July 1994 to 30th May 2010*) and I gave a rate of Shs 3,000/= p.m. (*for mesne profits*), making a total of shs. 555,000/=.

I also directed the District Land Officer, Nakuru District to carry out a valuation of the plaintiff's land within 60 days, on the basis of a willing seller, willing buyer.

In the event the valuation was not carried out within 60 days as I had ordered. It was eventually done with much cajoling, and the Report dated 25th November 2010, by J. S. Wanjie (*the District Land Officer, Valuer*) was filed in court on 29th November 2010.

The Report is well laid out, and I thank the District Land Officer/Valuer Mr. J. S. Wanjie, for his work. He describes the basis of valuation of the land as follows:

"The valuation method adopted in this case is on COMPARATIVE LAND SALES, as the most realistic method to determine the CURRENT MARKET VALUE of the parcel of land in an OPEN MARKET where data used is gathered from actual sales of similar properties and the prices achieved for them in the prevailing land market in the zone, taking into account also of any differences among the parcels where willing buyers and sellers have transacted."

After making observations regarding the location of the plaintiff's parcel of land - that it is near an up-coming trading centre (*Karima*) and adjacent to academic institutions (*the Karima Schools*) and it fronts a newly built tarmac road, with attendant advantages, Mr. Wanjie also observes that electricity is

available with Kenya Power and Lighting Co. Ltd, powerlines running along the frontage to the Highway with an existing step-down transformer.

With those observations and in light of the judgment given, the District Land Officer (*Valuer*) returned an open market value of the subject parcel, unencumbered currently at Kshs 450,000/= (Four hundred and fifty thousand only).

Having found for the plaintiff mesne profits of Shs 555,000/= up to 30-05-2010, that sum would now increase for the period 1.06.2010 to 31.03.2011 that is a period of ten (10) more months) by Shs 30,000/= at the constant rate of shs 3,000/= p.m. of mesne profits. In the result therefore, I would award the plaintiff a total sum of Ksh 1,035,000/= comprising -

(1) Mesne profits

(29.07.1994 to 31.03.2011 (95 months @3,000/= p.m.) ... shs 585,000/=

(2) Open Market Value per the Valuer's Report

shs 450,000/=

1,035,000/=

There shall therefore be judgment for the Plaintiff in the sum of Kshs 1,035,000/= together with costs, and interest at court rates until payment in full.

There shall be orders accordingly.

Dated, delivered and signed at Nakuru this 11th day of March 2011

M. J. ANYARA EMUKULE
JUDGE