



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT KISUMU**  
**CIVIL CASE NO.179 OF 2009**

JACKSON OKORE OSEN & 98 OTHERS.....PLAINTIFF

VERSUS

KENYA AIRPORT AUTHORITY .....DEFENDANT

**RULING**

1. The application before court is a Notice of Motion dated 21<sup>st</sup> June, 2010 brought pursuant to Order V1 Rule 13(1), b & d of the Civil Procedure Rules, Sections 3A & 1A of the Civil Procedure Act, Section 34 of the Kenya Airports Authority Act Cap 395 and Section 29 of Cap 295. The application seeks to have the plaint dated 9<sup>th</sup> December, 2009 struck out with costs.

2. The application is supported by the affidavit of **John Tito**, the Corporation Secretary and Chief Legal Officer of the applicant/defendant and the grounds on the face of the application. The application is based on the grounds that the suit was brought in contravention of Cap 395 and Cap 281 of the Laws of Kenya, the suit is frivolous, vexatious and an abuse of the court process.

3. The plaintiffs/respondents objected to the application by filing grounds of opposition dated 29<sup>th</sup> June 2010 as follows:

**1. The application is incompetent, frivolous and otherwise an abuse of the court process;**

**2. The application lacks merit and it is meant to delay the court process;**

**3. The applicant has not laid any basis in law necessary for the Honourable Court to allow the application;**

**4. The respondents will suffer prejudice if the application is allowed;**

**5. Such other grounds as it may be adduced at the hearing hereof;**

4. The plaintiff's filed their plaint on the 10<sup>th</sup> of November, 2007, an amended plaint was filed on 7<sup>th</sup> December 2009 claiming that in conjunction with the Government the defendant acquired their respective parcels of land without compensating or adequately compensating the plaintiffs for losses and other inconvenience. The amount sought in terms of compensation is Kshs.25,542,000 for each plaintiff.

5. On its part the defendant denied acquiring land compulsorily as alleged and contended that the Government of Kenya is undertaking the expansion of Kisumu Airport through the Defendant as an agency. The defendant further denied the loss alleged by the plaintiffs. The defendant in the alternative states in its defence that even if any land was compulsorily acquired without any or adequate compensation as alleged by the plaintiffs, the plaintiffs ought to have applied to the Land Acquisition Tribunal pursuant to Section 29 of the Land Acquisition Act Cap 295 of the Laws of Kenya as read with Section 75(2) of the repealed Constitution.

That the jurisdiction of the High Court can only be invoked by way of an appeal. Lastly that Cap 395, the Kenya Airport Authority Act requires that a notice be issued to the Managing Director of the defendant before a suit is instituted against the authority.

The plaintiffs/respondents counsel conceded in his submission that no notice was issued.

6. The issue for determination is whether the suit before court is competent or not in terms of Section 34 of Cap 393 and Section 29 of Cap 295 as read with the repealed Constitution.

Section 34 of the Kenya Airport Authority Chapter 395 provides:

**“where any action or other legal proceedings is commenced against the Authority for any act done in pursuance or execution, or intended execution of this Act or of any public duty or authority, or in respect of any alleged neglect or default or the execution of this Act or any such duty or authority, the following provisions shall take effect:**

**(a) the action or legal proceedings shall not be commenced against the authority until at least one month after written notice containing particulars of the claim, and of intention to commence the action or legal proceedings, has been served upon the Managing Director by the plaintiff or his agent**

**(b) .....**

Section 29 of the Land Acquisition Act Chapter 295 provides:

**“29(1) The right of access to the High Court conferred by Section 75(2) of the Constitution an interested person shall be by way of an appeal (Exercisable as of right at the instance of the person interested) in so far as respects**

**(a) the determination or right in or over land or;**

**(c) the amount of compensation awarded to him under Section 10;**

**(d) the amount of compensation paid or offered to him under Sections 23,25 or 26.”**

7. Having considered the relevant Sections of the law as quoted above it is clear that the suit is incompetent in that:

**(a) no notice was issued to the authority as required by Section 34 of Chapter 395;**

**(b) Any reference to the High Court would be by way of appeal against decision of the Commissioner of Lands;**

8. For the reasons above the suit being incompetent must as of no necessity be dismissed. Due to the nature of the claim each party will bear its own costs.

**Dated and delivered at Kisumu this 29<sup>th</sup> day of October 2010**

**ALI-ARONI**

**JUDGE**

**In the presence of:**

.....**Counsel for the plaintiffs/respondent**

.....**Counsel for the defendant**