



Mbulia Group Ranch v National Land Commission & 2 others (Environment & Land Case 113 of 2017) [2022] KEELC 13780 (KLR) (19 October 2022) (Ruling)

Neutral citation: [2022] KEELC 13780 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT & LAND CASE 113 OF 2017**

M SILA, J

OCTOBER 19, 2022

BETWEEN

MBULIA GROUP RANCH APPLICANT

AND

NATIONAL LAND COMMISSION 1ST PLAINTIFF

KENYA RAILWAYS CORPORATION 2ND PLAINTIFF

CHINA ROAD & BRIDGE CORPORATION 3RD PLAINTIFF

RULING

(Application to strike out suit against the 3rd defendant; plaintiff claiming to be owner of land part of which was used to construct the standard gauge railway and seeking compensation for it; 3rd defendant merely being the contractor engaged to construct the railway thus not liable to pay any compensation to the plaintiff; suit against 3rd defendant struck out)

1. The application before me is that dated 19 November 2021 filed by the 3rd defendant. The applicant seeks the following orders :-
 - i. That this suit be dismissed for want of jurisdiction.
 - ii. In the alternative, the claim against the 3rd defendant be struck out because the plaint dated 30 October 2015 does not disclose a cause of action against the 3rd defendant.
 - iii. Costs.
2. To put matters into context, this suit was commenced by way of a plaint on 23 March 2016 against the National Land Commission, Kenya Railways Corporation, and the applicant China Road & Bridge Corporation Kenya as 3rd defendant. The plaintiff pleaded to be the owner of the land parcel Mbololo/Mbulia/7. She averred that a portion of it was acquired by the 1st and 2nd defendants so that the 3rd



defendant can construct the Standard Gauge Railway (SGR). She averred that what was acquired was 104.442 acres but she was not compensated for the acquisition. She pleaded that she is entitled to be compensated in the tune of Kshs. 800,000/= per acre thus a total of Kshs. 187,209,600/-. In the suit the plaintiff seeks the following orders :-

- a. Payment by the defendants and to the plaintiff the sum of Kshs. 187,209,600/-.
 - b. Costs and interest.
 - c. Such or further orders as the honourable court deems fit to grant.
3. In this application, the applicant avers that firstly, this court has no jurisdiction because the Land Act, 2012 vests jurisdiction upon the National Land Commission to hear claims for compensation for land compulsorily acquired. Secondly, the applicant contends that there is no cause of action against her because she was only contracted to construct the SGR and is not involved in issues of compensation for land compulsorily acquired.
4. I have considered the above and the submissions of both Mr. Karina, learned counsel for the applicant, and Mr. Mwinzi, learned counsel for the plaintiff. I observe that the position of the plaintiff is that the 3rd defendant is a key and crucial party to the suit. However, from what I can see, there is really nothing being claimed against the 3rd defendant. What the plaintiff wants is compensation for land that she contends was compulsorily acquired. The entity that is to pay compensation would be the National Land Commission and/or Kenya Railways Corporation. It is not denied that the 3rd defendant was merely a contractor whose task was limited to construction of the SGR. She plays no role in matters related to compensation for land compulsorily acquired. I will therefore strike out the 3rd defendant from the suit. I will however make no orders as to costs.
5. On the issue of jurisdiction, I would prefer that that be left for the parties in the suit to raise it, if they so wish. The 3rd defendant is now out of the suit and will not be prejudiced by any order on jurisdiction that the court may make.
6. The result is that this application succeeds to the extent that the 3rd defendant is struck out of this suit but as I have said there will be no orders as to costs.
7. Orders accordingly.

DATED AND DELIVERED THIS 19TH DAY OF OCTOBER 2022

JUSTICE MUNYAO SILA

JUDGE, ENVIRONMENT AND LAND COURT

MOMBASA

