



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT OF KENYA**

**AT MOMBASA**

**PETITION NO. 31 OF 2020**

**ALOKA LIMITED.....PETITIONER**

**AND**

**THE NATIONAL LAND COMMISSION.....1<sup>ST</sup> RESPONDENT**

**KENYA NATIONAL HIGHWAYS AUTHORITY.....2<sup>ND</sup> RESPONDENT**

**RULING**

*(Application for injunction; principles to be considered; applicant seeking compensation for compulsory acquisition; there being a dispute on the amount payable; applicant seeking orders of injunction pending hearing of the suit; applicant's claim being a money claim and applicant can be compensated by way of damages thus has not demonstrated irreparable injury; application dismissed)*

1. In this petition, the petitioner has averred to be owner of a plastic manufacturing plant operating on the land described as Plot No. VMN/1052 (the suit land) which is owned by Kensington Property Developers Limited. The Kenya Government, through the respondents, intended to acquire this land in order to expand the Mombasa – Mariakani Road and published the intention in the Kenya Gazette of 3 March 2017. The respondents subsequently asked the petitioner to prepare its compensation claim. The petitioner avers that it presented a claim of KShs. 242, 506,460/=, but this was revised downwards by the respondents, initially to KShs. 180,000,000/=, but finally settling KShs. 58, 492,800/=. It has pleaded to have received the sum of KShs. 9,000,000/= so far. The petitioner disputes this valuation hence this suit where it inter alia seeks orders for the initial award of KShs. 180,000,000/= to be upheld.

2. Together with the petition, the petitioner filed an application dated 22 September 2020. It basically seeks orders of injunction to have the respondents restrained from entering or interfering with the suit land and the buildings erected thereon pending the hearing and determination of this petition. It is that application which is the subject of this ruling.

3. Whereas Mr. Ayieko, learned counsel for the petitioner, submitted for the grant of the orders, Mr. Mbuthia, learned counsel for the 1<sup>st</sup> respondent, submitted that this is a money claim and damages will suffice, thus not a fit case for an injunction.

4. The principles for the grant of an injunction were laid down in the case of *GiellavsCassman Brown (1973) EA 358*. An applicant must show a prima facie case with a probability of success and also demonstrate that he stands to suffer irreparable injury, which would not adequately be compensated by an award of damages, unless the injunction is granted. Where the court is in doubt, it will decide the application on a balance of convenience.

5. I agree with Mr. Mbuthia, that this is a money claim. What the petitioner wants is compensation for the loss it will suffer for the compulsory acquisition of the suit land where its plant stands. Any injury that the petitioner will suffer can be compensated by an award of damages. I am not therefore persuaded that the applicant has demonstrated that it stands to suffer irreparable injury if the injunction is not granted. In any event, the balance of convenience tilts towards allowing the project to proceed, for the benefit of the public, as the issue of compensation is being ironed out.

6. Given the above, I am not persuaded that this is a fit case for the grant of the order of injunction and this application is therefore dismissed with costs.

7. Orders accordingly.

**DATED AND DELIVERED THIS 3<sup>RD</sup> DAY OF FEBRUARY 2021**

**JUSTICE MUNYAO SILA**

**JUDGE, ENVIRONMENT AND LAND COURT**

**AT MOMBASA**