



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MALINDI

LAND CASE NO. 21 OF 2016

HASHIM SHARIFF ALI AHMED.....PLAINTIFF

VERSUS

THE NATIONAL LAND COMMISSION.....DEFENDANT

JUDGMENT

Background

1. By a Plaint dated 4th February 2016 as amended and filed herein on 25th July 2016, Hashim Shariff Ali Ahmed (the Plaintiff) prays for Judgment against the initial two Defendants for: -

- a) A declaration that the Plaintiff was the lawful owner of 19 acres of land acquired by the Government for the construction of the Lamu Port;*
- b) A declaration that the 1st Defendant's decision to reduce the Plaintiff's land was unlawful, null and void;*
- c) A declaration that the Plaintiff was entitled to Kshs 28,500,000/- as his rightful compensation;*
- d) An order directing the 1st Defendant to top-up the compensation paid to the Plaintiff by Kshs 20,132,113.50/-;*
- e) Nominal damages; and*
- f) Any other or further relief as this Honourable Court may deem fit to grant.*

2. By a Further Amendment of the Plaint on 9th October 2019, the suit as against the Honourable the Attorney General earlier on sued as the 2nd Defendant was withdrawn with the National Land Commission remaining as the sole Defendant. The said Defendant neither entered appearance nor filed a Defence. The suit hence proceeded to hearing by way of formal proof.

The Plaintiff's Case

3. The Plaintiff (PW1) testified as the sole witness in his case. He told the Court that he is the registered owner of 19 acres of land within Hindi/Magogoni area of Lamu County. PW1 told the Court that by a notice of inquiry dated 10th December 2014, it was published that he was the owner of the said parcel of land which was to be acquired by the Government of Kenya for the intended construction of the Lamu Port.

4. PW1 testified that according to the survey conducted, he was entitled to be paid a sum of Kshs 28,500,000/- as compensation by the Government. However, despite the agreement on compensation payable upon acquisition, the Defendant Commissioner has since without any proper reason and/or authority reduced the Plaintiff's plot size on the alleged ground that one of the Plaintiff's neighbours laid a claim to a portion of his land.

5. PW1 told the Court he was never called to any panel to deliberate on the alleged claim by the third party and that as a result, any decision made by the Defendant regarding the claim was biased, null and void. He told the Court that as a result of the Defendant's decision, his compensation was irregularly reduced from Kshs 28,500,000/- to Kshs 8,367,886.50/-

6. PW1 urged the Court to compel the Defendant to pay him his rightful compensation stating that every one acre of land was to be acquired at Kshs 1.5 Million.

Analysis and Determination.

7. I have perused and considered the pleadings filed herein by the Plaintiff as well as his sole evidence at the trial. I have equally considered the submissions and authorities placed before me by the Plaintiff. The National Land Commission sued as the sole Defendant herein did not enter appearance or participate in the proceedings herein despite evidence of service.

8. The Plaintiff herein seeks a declaration that he was the lawful owner of some 19 acres of land situated within Hindi/Magogoni area of Lamu County which land is said to have been acquired compulsorily by the Government of the Republic of Kenya for the construction of the Lamu Port.

9. According to the Plaintiff, they had agreed with the Government, taking into account the size of his parcel of land that he would be compensated in the tune of Kshs 28,500,000/- for the said parcel of land. Contrary to that agreement however, the Plaintiff accuses the Defendant Commissioner of unilaterally reducing the size of his parcel of land and thereby only paying him compensation for Kshs 8,371,013/- and not the agreed sum of Kshs 28,500,000/-.

10. As a result, the Plaintiff urges this Court to declare the decision reducing his acreage of land as unlawful, null and void and an order directing the Defendant to pay him the balance of the agreed sum being Kshs 20,132,113.50/-. The Plaintiff has also asked this Court to pay him nominal damages as well as any other relief as this Court may deem appropriate.

11. In support of his case, the Plaintiff has produced a schedule published by the Defendant in the Daily Nation Newspaper of 10th December 2014 titled "Lamu Port and Access Road Project Affected Persons List". Some three months after the Schedule was published, the Plaintiff wrote to the Defendant on 9th March 2015 stating in the relevant part as follows:

Re: Request for Payment of Compensation for Lamu Port Land- Hashim Sharrif Ali Mohamed

Sir, I am Hashim Sharrif Ali Ahmed, ID No. 21837888 of Lamu County. I owned a parcel of land measuring approximately 19 acres within the proposed Port area. I hereby request that the payment for my share of land acquired by the Government for construction of Lamu Port be paid to me in the shortest time possible. As most of the beneficiaries have received their compensation, I am deeply worried.

My land is well defined with no boundary dispute nor any case. It has been surveyed by Surveyors from the Ministry of Lands, Survey Department, Nairobi in the presence of all my neighbours. The neighbours are Irene Wangeci Alvarez on the Northern side, on the South Western side is Noor Salim Omar. My land parcel was the last on the Lamu Port boundary. However, on the Southern side is Mzee Athman Somebwana who was not affected and his land was not surveyed since it is outside the Lamu Port boundary."

12. As it were, it was apparent that the Plaintiff relied on an undated copy of a Sale Agreement between himself and one Jamal Mohamed Shee in proof of the fact that he owned the subject parcel of land. It was not however possible for this Court from the documents produced herein to ascertain that the parcel of land referred to in the Agreement is the same one said to have been sold to himself.

13. Even more difficult to ascertain was the claim that the Defendant compulsorily acquired 19 acres of land belonging to the Plaintiff. The Plaintiff had no title to the land and while he asserts that a survey was done by the Ministry of Lands in respect of the portion of land that was being acquired, the Survey Report was not produced herein and there was no way in which this Court could determine if indeed the Survey was done and or the determination arrived at upon conclusion of the survey process.

14. Similarly, while the Plaintiff told this Court in his testimony herein that there was an agreement that he be compensated in the sum of Kshs 1.5 Million per acre for his land, the alleged agreement with the Defendant was not produced to enable the Court come to the conclusion that the Defendant was owed a balance of the acquisition price. Indeed, while the Defendant purports that he was compensated only in the sum of Kshs 8,371,013/-, there was no evidence of such compensation and/or how it had been arrived at.

15. Arising from the foregoing, this Court had no basis upon which to arrive at the conclusion that the Plaintiff's property was compulsorily acquired and or that he was entitled to the compensation sought herein. In the premises and while the suit proceeded undefended, this Court could not but arrive at the conclusion that the Plaintiff had failed to prove his case to the required standard.

16. The result is that I find no merit in the Plaintiff's case and I dismiss the same with no order as to costs.

Dated, signed and delivered at Malindi this 30th day of April, 2021.

J.O. OLOLA

JUDGE