



Kang'ethe & another v Kenya Urban Roads Authority & 2 others (Environment & Land Case 289 of 2018) [2023] KEELC 863 (KLR) (9 February 2023) (Ruling)

Neutral citation: [2023] KEELC 863 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 289 OF 2018**

**J OMANGE, J
FEBRUARY 9, 2023**

BETWEEN

SAMUEL MWATHA KANG'ETHE 1ST PLAINTIFF

MARY KANG'ETHE 2ND PLAINTIFF

AND

KENYA URBAN ROADS AUTHORITY 1ST DEFENDANT

NATIONAL LANDS COMMISSION 2ND DEFENDANT

AND

SINOHYDRO TIANJIN ENGINEERING CO. LTD RESPONDENT

RULING

1. This suit relates to the Parcel of Land known as Land Reference Number 15081/2- Embakasi Area (the Suit Property).
2. Before this Court is the Plaintiff's Notice of Motion Application dated October 11, 2022 seeking orders that:
 - a. That the Honourable court be pleased to enter judgment on admission against the 1st and 2nd respondent for the sum of Kshs22,178,017.00/= plus interest at court rates from July 3, 2018 until payment in full.
 - b. That costs of the application be awarded to the applicants
3. The Application is supported by the 2nd Plaintiff's Affidavit and based on the grounds inter alia that the Applicants, are the owners of the suit property that is located near Outering Road and opposite the former Taj Mall. That on 19 January 2018, the 2nd Defendant gazette the intention to compulsorily acquire the suit property for the 1st Defendant, in order to improve the Outering Road, that by the



letter dated May 30, 2018, and the Replying Affidavit of July 30, 2018, the 1st Defendant admitted to releasing Kshs 22,178,017 to the 2nd Defendant for the purpose of compensating the beneficiaries of the Outering road project. The Plaintiffs therefore contend that the said letter dated May 30, 2018 and Affidavit of July 30, 2018 amount to admission for which Judgment should be entered.

4. The 1st Defendant responded to the Application vide the Affidavit of Abdulkadir Ibrahim Jattani- the 1st Defendant's Deputy Director of Surveys, sworn on November 16, 2022 wherein he admitted the 1st Defendant sought and obtained funds to compensate the affected parties in the Outering Road Project, and forwarded the same to the 2nd Defendant thereby informing the Plaintiff to collect their compensation from the 2nd Defendant. Accordingly, the 1st Defendant insists that instead of collecting compensation, the Plaintiffs filed the instant suit to enhance the compensation. The 1st Defendant therefore opposes the Application, and asserts that the Plaintiffs either accept the award or reject and challenge it entirely. The 1st Defendant also opposed the application on the basis that it was brought late in the day, as the suit has been subsisting since the year 2018.
5. The Interested Party on its part, though supporting the Application, contended that it had bought a portion of the suit property measuring 0.1743 Hectares from the Plaintiffs, developed it to the tune of Kshs 146,460,764 and following the compulsory acquisition, the 3rd Defendant destroyed its interest in the portion of the suit property. The Interested Party therefore seeks that the compensation of Kshs 22,178,017 does not reflect the true value of the suit premises.
6. The 2nd and 3rd Defendants did not file responses to the Application, while only the Interested Party filed submissions. The said submissions substantially focused on its beneficial interest to the property.
7. I have considered the Plaintiff's application, the affidavit and exhibits, just as I have the 1st Defendants' Reply and the Interested Party's Response, Exhibits and Submissions.
8. The only issue before me is whether Judgment on admission should be entered for the Plaintiffs in the sum of Kshs 22,178,017.00/= plus interest at court rates from 3rd July 2018 until payment in full should be entered against the 1st and 2nd Defendants.
9. The law on Judgment on admission is found in Order 13, Rule 2 of the [Civil Procedure Rules, 2010](#) provides that:

“Any party may at any stage of a suit, where admission of facts has been made, either on the pleadings or otherwise, apply to the court for such judgment or order as upon such admissions he may be entitled to, without waiting for the determination of any other question between the parties...”.

10. The locus classicus for judgment on admission is the case of [Choitram v Nazari](#) (1982 – 88) 1 KAR 437 Madan JA observed as follows:

“For the purpose of Order 12, rule 6 admissions can be express or implied either on the pleadings or otherwise, e.g in correspondence. Admissions have to be plain and obvious, as plain as a pikestaff and clearly readable because they may result in judgment being entered. They must be obvious on the face of them without requiring a magnifying glass to ascertain their meaning. Much depends upon the language used. The admissions must leave no room for doubt that the parties passed out of the stage of negotiations on to a definite contract. It matters not if the situation is arguable, even if there is a substantial argument, it is an ingredient of jurisprudence, provided that a plain and obvious case is established upon admissions by analysis. Indeed there is no other way, and analysis is unavoidable to determine



whether admission of fact has been made either on the pleadings or otherwise to give such judgment as upon such admissions any party may be entitled to without waiting for the determination of any other question between the parties”.

11. Applications for Judgment on admission such as the Plaintiffs’ in this case can be granted when there is not the slightest objection from the respondents, for as was said, admissions have to be as straight as a pikestaff. In the case of *Winfred Nyawira Maina V Peterson Onyiego Gichana* [2013] eKLR it was observed as follows:

“The admission can be in a pleading, correspondence or other document. What is paramount is that the admission has to be unequivocal and clear. It cannot apply where there are serious questions of law or fact to be argued. See *Gilbert v Smith* [1876] 2 Ch D 686 at 688 – 689, *Kiprotich v Gathua and others* [1976] KLR87 at 90.”

12. The purpose of entry of judgment on admission is to avoid unnecessary costs and delay as parties await the determination of a non-existent question as was held in the case of *Ideal Ceramics Limited v Suraya Property Group Ltd* [2017] eKLR that:

“The purpose of the law laid out under Order 13 of the Civil Procedure Rules is to ensure that a party whose entitlement is evidently due and admitted does not wait for determination by the court of a non-existence question. It is undesirable to litigate when there is no question or issue of fact or law.”

13. Judgment will always be entered on admission if the admission is clear and unambiguous. An admission may be express and or implied either on pleadings or otherwise such as correspondence. See *Top In Town Dry Cleaner Services Limited v Aegis Kenya Ltd. t/a Leopard Beach Resort & Spa Hotel* [2020] eKLR.

14. Judgment on admission may be entered on the basis of correspondence or pleadings filed, see *Isuzu East Africa Limited (Formerly General Motors East Africa Limited) v Nairobi City County Government* [2020] eKLR, *M/S Jondu Enterprises Limited v Spectre International Ltd* [2021] eKLR and *Scanad Kenya Limited v Independent Electoral & Boundaries Commission* [2021] eKLR

15. In this case, Judgment on admission is sought based on the correspondence of the 1st Defendant to the 2nd Defendant vide letter dated May 30, 2018, as well as the Replying Affidavit of the 1st Defendant’s Deputy Director of Surveys sworn on July 3, 2018.

16. In the letter, the 1st Defendant addressed the 2nd Defendant as follows:

“... This is to inform you that the Authority released to your account the sum of Kshs 22,178,017... being compensation for the Project Affected Persons on Outering Road Project...”

17. The precursor to the above letter was the 2nd Defendant’s letter dated May 5, 2018 which reads in part,

“The Commission carried out inspections and inquiries for Outer Ring Road Improvement Project... We hereby attach a compensation list of Project Affected persons amounting to Kshs 22,178,017... Kindly make arrangements to deposit Kshs 22,178,017... to the National Land Commission Bank Account... Your prompt action will enable the Commission to disburse the payments on time for this project”



18. Attached to the letter dated May 5, 2018 was a Compensation Schedule, disclosing the compensation for the Plaintiffs over the suit property was Kshs 12,935,017.
19. The 1st Defendant's Replying Affidavit of July 3, 2018 stated as much. Of interest was Paragraph 7 thereof: "Upon such remittance personnel of the 1st Respondent accordingly notified the Applicants to collect their compensatory monies from the 2nd Respondent..."
20. By its reply to the instant application, the 1st Defendant's contended that the Government was ready and willing to compensate the Plaintiffs, but instead of accepting the compensation, they filed the instant suit to enhance their compensation. The 1st Defendant therefore contends that the Plaintiffs should either accept compensation fully and withdraw suit, or reject it entirely and await this Court's determination.
21. The Interested Party on the other hand attempted to enhance its claim for compensation in this Application. It alleges to have bought a portion of the property from the Plaintiffs in 2008, and a value of Kshs 146,460,764 was destroyed. The interested party complicates the plaintiffs claim for Judgement of admission to the extent that the interested party contends that their stake should be considered when determining the compensatory amount to the plaintiff.
22. In view of this complication I find that it is only prudent that the court hears all parties before making a determination on the matter. Consequently, the application is dismissed. Costs shall abide the outcome of the suit. I further direct the Plaintiffs and Interested Party to set down the suit for full hearing and determination.

DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS THIS 9TH DAY OF FEBRUARY 2023.

JUDY OMANGE

JUDGE

In the presence of: -

Mr. Karika for Interested Party

No appearance for the Plaintiffs

No appearance for Respondents

Steve - Court Assistant

