



REPUBLIC OF KENYA

IN THE ENVIRONMENT & LAND COURT

AT NAIROBI

MILIMANI LAW COURTS

ELC CASE NO. 150 OF 2018

WILLIMARY DEVELOPMENT LIMITED.....PLAINTIFF

-VERSUS-

THE NATIONAL LAND COMMISSION & ANOTHER.....DEFENDANTS

RULING

Background.

1. The Plaintiff was the registered owner of LR No.27799/2 (sub-plot 29/14) and LR No.27799/3 (sub-plot 29/4). Sometimes in or around 2011, the Commissioner of Lands, the predecessor of the 1st Defendant embarked on the process of compulsory acquisition of the two properties for the construction and extension of Nairobi – Thika Road Project which is now known as the Thika Super Highway.
2. The compulsory acquisition was done on behalf of the 2nd Defendant under the provisions of the Land Acquisition Act (now repealed) . The following amounts were awarded in compensation

a. LR No. 27799/2 (sub-plot 20/14) : Kshs.50 723 765.00

b. LR No.27799/4 (sub-plot 29/4) : Kshs.33 807 500.00

TOTAL : Kshs.84 531 265.00

3. The 2nd Defendant decided to pay the Plaintiff by instalments. As at February 2015, the 2nd Defendant had paid a total of Kshs.50,723,765.00 leaving a balance of Kshs.33,807,500.00. In 2016, the Plaintiff moved to court where it filed Judicial Review proceedings seeking to compel the Defendants by way of mandamus to pay the balance together acquired interest. While the Judicial Review proceedings were pending in Court, the 2nd Defendant paid the principal sum of Kshs.33,807,500/= on 27th February 2017 leaving out the interest. The judicial Review application was subsequently struck out on the ground that the High Court did not have jurisdiction to entertain it. This is what prompted the Plaintiff to filed this suit in which it is pursuing the interest which had accrued from the compensation amount.

Preliminary Objection.

4. On 14th June 2018, the 2nd Defendant's Advocates filed a notice of preliminary objection against the Plaintiff's suit on grounds that the suit was statute barred by virtue of section 67 of the Kenya Roads Act No.2 of 2007. On 24th June 2019, the parties were directed to dispose of the preliminary objection through written submissions. The Plaintiff filed submissions on 3rd August 2019. The 2nd Defendant filed their submissions on 30th July 2019. The Advocates for the parties highlighted their submissions on 10th March 2020.

5. It is the 2nd Defendant's argument that the Plaintiff's suit is statute barred as it was not filed within twelve months from the date the cause of action accrued to the Plaintiff. The 2nd Defendant refers to the date the cause of action accrued to the Plaintiff as per Plaintiff's pleadings which is 28th may 2012. The 2nd Defendant therefore argues that as the suit was not filed within twelve months from 28th May 2012, this suit is statute barred and ought to be struck out with costs.

Plaintiff's arguments.

6. The Plaintiff was at pains in trying to oppose the preliminary objection by the 2nd Defendant. The Plaintiff argued that it will amount to an absurd interpretation of the law to hold that section 67(b) of the Kenya Roads Act stretches its limitation arm to affect a public duty created and self-contained in a separate statute. The Plaintiff further submitted that section 67(b) of the Kenya Roads Act applies only to acts and/or duties envisaged under the Act and cannot therefore be applied to actions done under an independent Act in this case the Land Acquisition Act (now repealed).

Analysis.

7. I have carefully considered the arguments by the 2nd Defendant and the Plaintiff. I have also considered the submissions by the parties herein. There is only one issue to be determined herein. This is whether this suit is statute barred. **Section 67** of the Kenya Roads Act provides as follows;

“Where any action or other legal proceeding lies against an Authority for any act done in pursuance or execution, or intended execution of an order made pursuant to this Act or of any public duty, or in respect of any alleged neglect or default in the execution of this Act or of any such duty, the following provisions shall have effect:-

a. The action or legal proceeding shall not be commenced against the Authority until at least one month after written notice containing the particulars of the claim and of intention to commence the action or legal proceedings, has been served upon the Director-General by the plaintiff or his agent; and

b. such action or legal proceedings shall be instituted within twelve months next after the act, neglect, default complained of or, in the case of a continuing injury or damage, within six months next after the cessation thereof.

8. The Plaintiffs claims is predicated on Section 19(1) of the Land Acquisition Act (Now repealed) which provided as follows:-

“(1) The Commissioner shall appoint a date, not earlier than thirty days and not later than twelve months after the publication of the notice of intention to acquire, for the holding of an inquiry for the hearing of claims to compensation by persons interested in the land, and shall—

a. cause notice of the inquiry to be published in the Gazette at least fifteen days before the inquiry; and

b. serve a copy of the notice on every person who appears to him to be interested or who claims to be interested in the land.

9. According to the Plaintiff, the compensation award was made on 28th March 2012. As per section 19(1) of the Land acquisition Act, the Commissioner of Lands was expected to take possession of the two acquired properties not later than sixty days from the date of the award. The Plaintiff therefore argues that the commissioner of lands was deemed to have taken possession on 28th May 2012, hence its claim of interest from 29th may 2012 to 27th February 2017 when the balance of the compensation award was paid to the Plaintiff.

10. The interest which the Plaintiff claim is predicated on Section 16(1) of the Land Acquisition Act which provided as follows:-

“(1) Where the amount of any compensation awarded is not paid or paid into Court on or before the taking of possession of the land, the Commissioner shall pay interest on the amount awarded at such rate as may be prescribed which shall not be less than six per cent per annum from the time of taking possession until the time of payment or payment into Court”.

11. The 2nd Defendant is established under the provisions of the Roads Act. Its functions and duties are spelt under the Roads Act. For the purposes of this suit , the acquisition of the two properties was done by the 1st defendant on behalf of the 2nd Defendant. It is the 2nd Defendant which was to pay the compensation money to the plaintiff. This is clear from the provisions of Section 23(3) of the Roads Act which provides as follows:-

“Where land is acquired on behalf of an Authority under subsection (2), such Authority shall bear all costs in relation thereto”.

Conclusion

12. It is the Plaintiff’s case that the 2nd Defendant paid the balance of the compensation sum on 27th February 2017 but declined to pay interest thereon as provided by the law. The Plaintiff is clear in its pleadings that the cause of action in its favour accrued on 28th May 2012. Under Section 67(b) of the Roads Act, any claim against the 2nd Defendant ought to have been commenced within twelve months from 29th May 2012. Even if we were to assume that interest is a continuing injury, interest continued to accumulate until 27th February 2017 when the principal was paid, then the Plaintiff was expected to file its claim within six months from 27th February 2017 when the principal sum was paid. This suit was filed on 3rd April 2018. It was therefore filed outside the statutory period and hence statute barred. In this regard, I agree with the decisions in **NBI HCCC No.348 of 2013 Sumac Development Company Limited Vs Kenya National Highways Authority & 2 Others**, and John Kibor Kipkorir (suing as the administrator of the Estate of William Kibor Ruto also known as **Chebor Ruto Vs Kenya Rural Roads Authority (2018) eKLR** . I therefore uphold the preliminary objection and proceed to strike out the Plaintiff’s suit with costs to the 2nd Defendant.

It is so ordered.

Dated, signed and delivered at Nairobi on 7TH this day of MAY,2020

E.O.OBAGA

JUDGE

In the Presence of :-

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Court Assistant: Hilda

E.O. OBAGA

JUDGE