



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KAJIADO

ELC CASE NO. E001 OF 2021

DAVID KARIITHI.....PLAINTIFF

-VERSUS-

NATIONAL LAND COMMISSION.....DEFENDANT

JUDGMENT

The Plaintiff's claim against the first Defendant is as follows;

- (a) Just compensation in the sum of Kshs. 35, 783, 250/=
- (b) Interest at Court rates.
- (c) Costs of this suit
- (d) Any other relief.

The Plaintiff's is as follows;

He used to be the registered proprietor of *L.R. NO. NGONG/NGONG/29412 measuring approximately 0.1 hectares*.

On the said land, the Plaintiff had built a home comprising of a 4 bedroom maisonette and other site works, water well, servants' quarters, septic tank, pit latrine, driveway and parking, masonry boundary wall and ten *grevillea robusta* indigenous trees.

The house was constructed of reinforced concrete beams and columns with natural stone walls infills, externally keyed and internally plastered and painted and lined ceramic tiles up to dado level on wet areas.

The roof was double pitched laid with concrete roofing. The ceilings were either plastered and painted to lower floors or gypsum to the upper floor. The floors were mass concrete finished in ceramic tiles throughout.

The external doors and the ones to the balconies were burglar-proofed and steel made. The internal ones were hardwood timber matchboards.

The windows were glazed in metal casement with metal grilles and externally recessed. The staircase was constructed of reinforced concrete and finished in ceramic tiles and wooden handrails.

In order to construct the Standard Gauge Railway (SGR) it became necessary to acquire the Plaintiff's land compulsorily under **Article 40 of the Constitution of Kenya and Section 107 to 133 of the Land Act (Act no. 6 of 2012)**. The first Defendant was the authority acquiring the land compulsorily on behalf of the second Defendant. It was also the authority to pay compensation to the Plaintiff.

Prior to the compensation for acquisition, the first Defendant carried out a valuation of the Plaintiff's property and found the value to be Kshs. 90, 963, 275/=. The Plaintiff's valuer found the value to be Kshs. 92, 351, 400/=. The Plaintiff was agreeable to the lesser value offered as proposed by the first Defendant after negotiations.

On 23rd May, 2018, the first Defendant issued the Plaintiff with an award letter for the figure of Ksh. 90, 963, 275/=.

On the 17th December, 2018, without any just cause or explanation, the Defendant unilaterally issued the Plaintiff with a different award letter drastically reducing the award to Ksh. 55, 180, 025/=. This variation of Kshs. 35, 783, 250/= is what made the Plaintiff file this

action.

In support of his case the Plaintiff filed the following;

- i) His own witness statement
- ii) Copy of title deed for LR. NGONG/NGONG/29412
- iii) Gazette Notice No. 2033 of 2nd March, 2018.
- iv) Valuation for Compulsory Acquisition Report showing the Plaintiff's compensation amount as Kshs. 90, 963, 275/=.
- v) Valuation report by Icon Valuers showing the value as Ksh. 92, 351, 400/=.
- vi) The award of Ksh. 55,180, 025/= dated 17th December, 2018.
- vii) A demand letter dated 11th November, 2020.

The first Defendant did not enter appearance or file a defence in the suit.

The suit against the second Defendant was withdrawn by a consent dated 8th June, 2021.

At the trial on 4th October, 2021, only the Plaintiff testified. He said that though his home was valued at Kshs. 92, 351, 400/= he was forced by circumstances to accept the lower amount of Kshs. 55, 160, 125/= because his house was due for demolition.

Counsel for the Plaintiff filed written submissions on 28/10/2021 in which he identifies the main issue for determination as simply whether the Plaintiff is entitled to the amount prayed for.

I have carefully considered the Plaintiff's case as contained in the pleadings and the evidence. I agree with the Plaintiff's counsel that the issue is simply whether the Plaintiff is entitled to the prayers in the plaint.

I find that the Plaintiff has proved his claim against the first Defendant as a balance of probabilities for the following reasons;

Firstly, the Plaintiff's claim is not controverted by any pleadings or evidence from the first defendant.

Secondly, the Plaintiff has produced two valuation reports showing his property to be valued over Ksh. 90,000,000.

Thirdly, the Plaintiff has proved that he was paid Kshs. 55, 180, 025/= only and that this amount is less than the actual value of his property.

Fourthly, the first Defendant has not explained to the Plaintiff or to the Court why he paid the Plaintiff an amount less than the actual value of the property even though it had ample opportunity of explaining this anomaly.

Fifthly, under the law, particularly **Section 111(1) of the Land Act**, the Plaintiff was entitled to fair compensation for compulsory acquisition.

For the above reasons, I enter Judgment for the Plaintiff against the first Defendant as prayed for in the plaint.

DATED SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 30TH DAY OF NOVEMBER, 2021.

M.N. GICHERU

JUDGE