



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT KAKAMEGA**

**ELCC No. 546 OF 2014**

**CHARLES LUTTA KASAMANI.....PLAINTIFF**

**VERSUS**

**ATTORNEY GENERAL.....1<sup>ST</sup> DEFENDANT**

**NATIONAL LAND COMMISSION.....2<sup>ND</sup> DEFENDANT**

**RULING**

1. By his amended plaint filed herein, the plaintiff sought judgment against the defendants jointly and severally for:

(i) *Vacant possession of land reference 8056/314 Mumias Township.*

(ii) *In the alternative land equivalent to L.R. 8056/314 Mumias Township in the Republic of Kenya.*

(iii) *Mesne profits from 9<sup>th</sup> July 2002 till the hearing and determination of this case, at a rate of Kshs. 80,000/= per month.*

2. The matter went to trial and judgment was ultimately delivered on 26<sup>th</sup> November 2019 by N. A. Matheka J in favour of the plaintiff. The original of the typed judgment which is on record and which is verified by decree issued on 13<sup>th</sup> February 2020 shows that judgment was as follows:

1. *The Respondents are ordered to adequately compensate the petitioner for compulsorily acquiring his property.*

2. *Costs to the plaintiff.*

3. Some one year and three months after delivery of the judgment, the plaintiff filed Notice of Motion dated 30<sup>th</sup> March 2021, seeking the following orders:

1. *[Spent]*

2. *[Spent]*

3. *THAT the Plaintiff/Decree Holders valuation Report filed herein in the sum of Kshs. 13,300,000/= be value of the Land Reference No. 8086/314 (IRN 6011) MUMIAS TOWN, the subject matter herein.*

4. *THAT the Defendants/Judgement Debtors do pay the Plaintiff/Decree Holder, as compensation for compulsory acquisition of L.R. 8086/314 (I.R.N 6011) - MUMIAS TOWN, the sum of Kshs. 13,300,000 forthwith.*

5. *THAT the Defendants/Judgement Debtors do pay to the Plaintiff/ Decree Holder the costs ordered in sum of Kshs. 417,995/= with interest from 1.10.2020 till payment in full.*

4. The application is supported by an affidavit sworn by the plaintiff. He deposed that no appeal is pending against the judgment and that despite being served with the decree, certificate of costs, certificate of order against the government and all necessary notices, the defendants have failed to satisfy the decree and certificate of costs. He added that despite asking the second defendant to carry out a valuation of the land compulsorily acquired, it has refused to do so. That as a result, he has been forced to carry out a valuation to determine the value of the land

for compensation. He annexed copies of various letters as well as a valuation report by ADD Property Consultants, dated 19<sup>th</sup> March 2021. He went on to depose that the defendants should pay him KShs 13,300,000 being value of land, interest on KShs 13,300,000 from 26<sup>th</sup> September 2019 till payment in full, KShs 417,995 being costs of the suit, interest on costs from 1<sup>st</sup> October 2020 till payment in full and KShs 75,400 being cost of valuation.

5. The first defendant opposed the application through grounds of opposition in which it took the position that the valuation done was not ordered by this court, that there is need for a joint valuation between the parties, that the judgement did not order compensation in the sum of KShs 13,300,000, that there was no order of interest and that the application is not the proper one to compel the defendants to satisfy the decree.

6. The second defendant filed a replying affidavit sworn by Edmond Gichuru, its Acting Director of Legal Affairs and Enforcement. He deposed that the decree annexed by the plaintiff is not a true reflection of the orders made in the judgment. He added that the court gave an order in the judgment for an alternative land equivalent to LR 8056/314 Mumias Township in the Republic of Kenya. He annexed what he referred to as “a complete copy of the Judgement as it was delivered and reported” and further deposed that the valuation report annexed by the applicant was not prepared in accordance with Part VII of the Land Act and hence it should not be accepted by the court. In the circumstances, there has not been any wilful violation of the court’s orders by the second defendant since it acts only on the instructions of the acquiring body.

7. The application was canvassed through written submissions. Both the plaintiff and the first defendant filed submissions. The second defendant did not file any.

8. I have considered the application, the grounds of opposition and the submissions. Although the first defendant introduced some argument as to the exact nature of the orders made in the judgment, I note that this court has the original record including the original of the judgment. The record confirms that the judgment is as reproduced at paragraph 2 of this ruling.

9. A reading of the final orders in the judgment leaves no doubt as to what obligations the judgment imposed on the parties: the respondents (read defendants) were ordered to adequately compensate the petitioner (read plaintiff) for compulsorily acquiring his property. The court did not determine the extent of the compensation.

10. Ordinarily, a judgment brings a case to conclusion save proceedings towards enforcing the judgment. Once a court renders its judgment, it becomes *functus officio* in so far as its power to determine the parties’ respective claims in the matter goes. Once such a decision has been made, it is final and conclusive, subject to any right of appeal. The court does not have jurisdiction to revoke or vary its decision, save in cases of applications for setting aside or review. See **Raila Odinga & Others vs. IEBC & Others [2013] eKLR.**

11. A court’s jurisdiction flows from either the Constitution or legislation or both and it can only exercise jurisdiction as conferred on it by law. See **Samuel Kamau Macharia & another v Kenya Commercial Bank Limited & 2 others [2012] eKLR.** Any order or step taken by a court in the absence of jurisdiction is a nullity. See **Owners of the Motor Vessel “Lillian S” v Caltex Oil (Kenya) Ltd [1989] eKLR.**

12. The present application neither seeks setting aside or review. Instead, it invites the court to determine the value of the suit property and thereafter to order the defendants to pay to the plaintiff such amount as compensation for compulsory acquisition of the property. A reading of the judgment does not envisage a situation where the court would revisit the matter post judgment to determine the quantum of compensation for purposes of compulsory acquisition. I agree with the defendants that the quantum of compensation cannot be determined in the manner sought by the plaintiff. The plaintiff will have to go back to the drawing board to ascertain how to lawfully attain compensation, including, if legally tenable, filing fresh proceedings.

13. This court is *functus officio* and without jurisdiction in so far as its capacity to determine the parties’ respective claims in this matter goes. Any proceedings filed in a court without jurisdiction are dead on arrival and cannot be remedied. See **Phoenix of E.A. Assurance Company Limited v S. M. Thiga t/a Newspaper Service [2019] eKLR.**

14. In the result, Notice of Motion dated 30<sup>th</sup> March 2021 is struck out. There shall be no order as to costs.

**DATED, SIGNED AND DELIVERED AT KAKAMEGA THIS 14TH DAY OF DECEMBER 2021.**

**D. O. OHUNGO**

**JUDGE**

Delivered in open court in the presence of:

No appearance for the Plaintiff

No appearance for the 1<sup>st</sup> Defendant

No appearance for the 2<sup>nd</sup> Defendant

Court Assistant: E. Juma