



REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI
CAUSE NO. 3225 OF 1982

LINUS MUKURU NJUKI.....APPLICANT

VERSUS

COMMISSIONER OF LANDS & 4 OTHERS.....RESPONDENT

RULING

This Chamber Summons is brought under Order VI Rule 13 (1) (a) and 3 of the C P Rules (cap 21). It is seeking to have an order of this court striking out proceedings filed earlier in the court by way of an originating summons. The original summons had been filed by the Commissioner of Lands as the 1st applicant and four other people who claimed to have an interest in an award of compensation under the land Acquisition Act of a portion of land parcel No Magumoni/Thuita/350. The summons lists all the issues or questions to be determined by the court. The issues boil down to this:

- (a) Whether the respondents being Hoseah Nyaga, John Munene, Eusebio Njeru and Julius Ikingi have any legal interest in the suit premises.
- (b) Whether the Commissioner of Lands acted correctly in awarding compensation to the respondent for their alleged legal interest in the land.
- (c) Whether the respondent should be paid the money currently deposited with the commissioner of lands as compensation for compulsory acquisition of the property.

The reasons upon which the applicant is seeking to have the originating summons struck out are that in his view the four respondents are not entitled to any compensation in respect of the suit premises under the Land Acquisition Act (cap 295) because the agreement for sale between the respondents and the applicants' father dated the 26th January, 1977 under which the respondents are claiming interest did not obtain consent of the Land Control Board and it became null and void for all purposes within the meaning of section (6) of the Land Control Board Act (cap 302) then in force.

Secondly that the respondents are not entitled to any compensation in respect of the said land because even if the said agreement is said to be valid, clause (7) of the agreement would operate:

“That should the transfer fail and such failure is not occasioned by the fault of any party to the agreement is terminated mutually and the vendor shall refund all the money received by him from any or all purchase as the case may be.”

Thirdly considering the definition of land in section (2) of the Land Acquisition Act cap 295 and section 3 of the Registered Land Act cap 300 and the term “a person interested” in section 2 of the Land Acquisition Act and section 6 of the Land Control Board Act (cap 302). In the applicant's view the

respondents are not “persons interested” within section (2) of the Land Acquisition Act and therefore not entitled to the compensation awarded to them by the Commissioner of Lands under the provisions of sections 8, 10 and 13 of the same Act.

Finally that in the absence of consent to transfer from the relevant Land Control Board, the only legal remedy available to the 2nd and to 5th respondents is the recovery of consideration under section 7 of the Land Control Board (cap 302).

Subsequently a replying affidavit sworn by the 4th respondent on behalf of all the respondents was filed. In the affidavit they averred that one Julius Njeru Njuki (deceased) but the registered proprietor of the suit premises built a kiosk on his land after obtaining permission from Meru Country Council. Later he on his own accord applied to Meru County Council for a market to be established near his kiosk. He drew a sketch plan annexed to the affidavit showing 22 plots on his land and the proposed purchasers.

The people the respondents being some of them, agreed to buy the plots to enable him to present a petition to Meru County Council. By an agreement dated 26th January, 1977 annexed to the affidavit the deceased agreed to sell to the respondents 6 of the plots shown on the sketch plan.

The respondents then paid to the vendor the full agreed purchase price and he acknowledged as per clause (2) of the agreement:

“That Nos 1, 2, 3 and 4 above have paid their full price and vendor acknowledges the receipt of the same.”

In respect of the consent from the Land Control Board, Para (5) of the agreement states:

“That the vendor has agreed to apply to the Land Control Board for the consent of the transfer of the said plots. The said Board is scheduled to sit on the 3rd February, 1977.”

It is the respondent’s contention that the above took place. On the 3rd February, they all appeared before the Nithi Divisional Land Control Board when the deceased was granted consent to sub-divide the land into the agreed plots and transfer to the applicants, his son the applicant and the remaining portion to himself. Letter Exh M3 confirmed the consent for sub-division.

The deceased died in June, 1980 before the sub-division and transfers were carried out. When the Kenya Government compulsorily acquired the land under Gazette Notice of the 13th February, 1981, the applicants accordingly filed their claims for compensation from the Kenya Government. They were supported in their claim by the seven chiefs. They filed their claims and were offered the quotations for the portions. Order 6 rule (13) (1) (a) (Civil Procedure Rules) under which the application is brought provides that:

“At any stage of the proceedings the court may order to be struck out or award any pleadings on the grounds that:

(a) It discloses no reasonable cause of action or defence

... or...”

I have analysed in details the grounds upon which the applicants rely on his contention that the applicant’s defence discloses no reasonable cause of action or defence. The practice in our courts which is now well established is that the court will only exercise it’s discretion under the above order when it is satisfied that the defence on record in this particular case the replying affidavit does not raise any triable issues at all. This decision is taken after carefully considering the evidence only by way of affidavits on record. The inference being that the case as it stands, the affidavits clearly demonstrates that the defendants have no defence whatsoever to the allegation or claims made by the other side.

Having considered both parties' sides, can it be said with certainty that the applicant has satisfied this court that the applicants/respondents had no interest in the suit premises; that the agreement was null and void for lack of consent from the Land Control Board and so consequently they were not entitled to the award of compensation given to them by the commissioner of lands?

From the affidavits, it is clear that it is in issue as to whether the consent for sub-division and transfer was given. While the applicant says that consent was only for "sub-division", Respondent says that it was for subdivision and transfer. I have noted that the Exh E N 3 reads:

"Nature of transaction"

(c) Sale, Lease, sub-division, Mortgage Charge, etc – sub-Division

(d) Names of parties

(i) From Justus Njeru Njuki

(ii) To the 5 applicants plus the defendant and the deceased."

Without prejudging the issue, the fact that the consent lists to whom the land was to go would indicate that this is an issue that would have been dealt with in a full hearing where evidence would be called. This is therefore a clear triable issue. It therefore goes to the record of the questions as to whether the agreement between the parties was null and void for lack of the necessary consent.

As to the issue of the meaning of a "Person Interested", as pointed out by counsel for the respondent, section (2) of the Land Acquisition Act states:

"Persons interested" in relation to land or buildings means a person who has an interest in or a right over the land or building."

If the Legislative wished to restrict that interest only to a legal interest, it would have done so by clearly stating that compensation would only be given to proprietors or Trustees or legal owners of the land in issue. I would as of at the moment be inclined to find that this is whether or not the applicants can establish an interest as indicated by the Act, would be matter of evidence and would only be resolved after full hearing. It is in the view of this court a triable issue.

I am inclined at this stage of the proceedings to dismiss the application for striking out the originating summons for disclosing no reasonable cause of action or defence and rule that this originating summons goes on for a full hearing in order for the court to effectively determine the issues between the parties. It is so ordered. Costs of this application will be in the cause.

Dated and Delivered this 8th day of December, 1987

EFFIE OWUOR

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JUDGE