



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

ELC MISC 12 OF 2018

ABDI NOR UMAR..... PLAINTIFF

VERSUS

ADAN MAMO ELEMA & 22 OTHERS.....DEFENDANTS

THE COUNTY GOVERNMENT OF ISIOLO.....INTERESTED PARTY

RULING

1. This miscellaneous suit was filed on 16.4.2018 vide a notice of motion where the applicants who are plaintiffs in Isiolo CMCC No. 51/2013 sought for the transfer of the lower court file to this court on account of want of pecuniary jurisdiction of the magistrates court. It was contended that the suit land was worth Kshs.52,800,000.

2. On 2.5.2018, the court directed that the respondent's files their valuation report within 21 days noting that plaintiff/applicant had already done his own valuation by the time this miscellaneous suit was being filed. The respondents did not avail their valuation report as per the court's given timelines hence on 23.7.2018, their valuation report filed on that day was expunged from the record.

3. The court gave directions for the application dated 13.4.2018 to be heard orally on same date. I delivered an interim ruling thereof on 17.10.2018 whereby I gave directions that another valuation report be availed by the government valuer and the court was to make a determination thereafter based on all the filed reports.

4. The court further stated that the ruling of 17.10.2018 was an interim one pending the final decision on the matter.

5. Pursuant to that ruling of 17.10.2018, a government valuer filed his valuation report on 15.11.2018, where he indicated that the value of the suit land is Shs.33,000,000.

6. The respondent has objected to the contents of this report hence this ruling. The objection was made by Mr. Ashioya on 18.3.2019 where he stated that the figure of Shs.33,000,000 as value of the suit property doesn't reflect the true state of the matter. He therefore requested that a 2nd opinion be sought through another government valuer.

7. The applicant has stated that the application made is but a delaying tactic. Counsel for the applicant also drew the court's attention to the valuation report of the respondent where the suit land was valued at Shs.14,000,000 while the developments thereon were valued at shs.19,000,000. Applicant has urged the court to make a determination on the pending matter and to consider the government valuer's report.

8. I have keenly analyzed the arguments raised herein and the record. In particular, I do make reference to my ruling of 17.10.2018 where I stated as follows;

"I therefore give directions that another valuation report be availed by the government valuer. The costs of such valuation to be met jointly by the parties herein. The respondents are also allowed to file their own independent report. The court will make a determination based on all the filed reports. This therefore constitutes an interim ruling geared to have a final decision on the matter".

9. This means that the court had still given the respondents a window of opportunity to file their own independent report despite the courts orders of 23.7.2019. They never filed any such report. The respondents have also not demonstrated in which manner the government valuer's report could be erroneous. It is not enough for the respondent to give a blanket statement that they are not in agreement with the figure of shs.33,000,000.

10. Further, I find that the respondents valuation report of 23.7.2018 indicated that the;

i. Market value of the land is Kshs.14,000,000.

ii. Current market value (developments) is Kshs.19,700,000.

11. This is the report which respondents had sought to rely on but was expunged on 23.7.18.

12. However, considering the present application by respondents, that they are unhappy with the government valuer's report, I have then found it necessary to fall back on the respondent's report.

13. I have also considered that the litigation journey of this miscellaneous file has taken long, over a year in the determination of the value of the suit land. That issue ought to be brought to an end.

14. The common denominator in all the valuation reports availed before this court is that the suit land and developments thereon are worth over shs.20,000,000. I therefore find that the application made by respondents to have another valuation report is uncalled for and is unmerited.

15. I therefore proceed to give a final decision in respect of the application dated 13.4.2018.

16. The application dated 13.4.2018 is hereby allowed with no orders as to costs.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS 15TH DAY OF MAY, 2019 IN THE PRESENCE OF:-

C/A: Kananu

Mbaabu Inoti for the interested party

Mwiti holding brief for Ashaba for plaintiff

Plaintiff

HON. LUCY. N. MBUGUA

ELC JUDGE