



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KITALE**

**LAND CASE NO. 123 OF 2017**

**CHRIS EKUTAN ERUKUDI.....PLAINTIFF**

**VERSUS**

**THE COUNTY GOVERNMENT OF TURKANA.....DEFENDANT**

**JUDGMENT**

1. The plaintiff's claim is contained in the plaint dated 22/6/2017 which was filed on the on 10/7/2017. In that plaint, the plaintiff the seeks the following reliefs against the defendant:-

- (a) **Compensation for plot No. 459 Lokichoggio Trading to be fixed by the court on the basis of a current Valuation Report and market value.**
- (b) **Punitive damages for the unlawful acquisition and trespass. In the alternative eviction from the suit premises.**
- (c) **Costs.**
- (d) **Interest.**

2. The plaintiff's case is that at all material times he was the owner of a commercial plot known as **Plot No. 459** located at Lokichoggio in Turkana County measuring **2.0 acres** having been allocated the same by the County Council of Turkana; that upon allotment he has regularly paid all statutory levies to the defendant; that in violation of the plaintiff's constitutional rights under **Article 40** and **47** of the Constitution of Kenya the defendant, without notice or compensation to the plaintiff, forcibly entered the suit premises and erected a permanent building to house the Sub-county administration offices; that the plaintiff deserves compensation on the basis of the current economic value of land for the unconstitutional and unlawful acquisition of the suit land. According to him the defendant has not responded to his demands which failure he describes as "impunity".

3. The defendant never filed any memorandum of appearance or defence despite being served with summons and plaint and other documents on 2/10/2017 as evidenced by the affidavit of service sworn by one **George Khaemba Mumali** filed on 11/7/2018.

4. The plaintiff testified on 9/7/2019 when this suit came up for formal proof. He adopted his written statement recorded on 22/6/2017 as evidence-in-chief in this case. He reiterated the contents of his plaint and produced documentary evidence in support of his case. In particular he produced the following documents: two receipts, each dated 28/4/2001 for Kshs.1000/= for the allotment letter and Kshs.500/= transfer fee respectively, a plot allotment letter dated 24/9/1992, a plot transfer letter dated 28/5/2001, a valuation report dated 18/3/2019, a fee note dated 18/3/2019 and some photographs showing the land and the developments that the defendant has erected hereon.

5. At the formal proof of this case on 9/7/2019 the plaintiff produced those documents and averred that he does not claim the value of the structures on the land which structures the defendant put up; however he was seeking compensation to the sum of Kshs.6,000,000/= for the land only which is the amount reflected in the valuation report produced by its author PW2, one Brian Maneno Egondi as P. Exhibit 8. It assigns the current market value of the suit land as Kshs.6,000,000/=. Brian Maneno Egondi testified that he visited the suit land and after making observations and an analysis he came to the conclusion that the value given in that report was the correct current commercial value for the two acres.

6. This suit went undefended. The evidence of the plaintiff was not controverted. In my view the plaintiff has proved his claim on a balance of probabilities and I enter judgment in his favour and I issue the following orders:

- (a) **The defendant shall pay to the plaintiff Kshs.6,000,000/= as compensation being the current commercial value of the suit land which it unlawfully acquired from the plaintiff.**

**(b) The defendant shall bear the costs of this suit.**

It is so ordered.

**Dated, signed and delivered at Kitale on this 30<sup>th</sup> day of July, 2019.**

**MWANGI NJOROGI**

**JUDGE**

**30/7/2019**

Coram:

Before - Hon. Mwangi Njoroge, Judge

Court Assistant - Collins

Ms. Wanjala holding brief for Samba for plaintiff

N/A for the defendant

**COURT**

Judgment read in open court.

**MWANGI NJOROGI**

**JUDGE**

**30/7/2019**