



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KAJIADO

CONSTITUTIONAL PETITION NO.2 OF 2019

ETHICS AND ANTI- CORRUPTION COMMISSION.....PETITIONER

VERSUS

NATIONAL LAND COMMISSION.....1ST RESPONDENT

CLARENCE MATHENY LEADERSHIP TRAINING INSTITUTE.....2ND RESPONDENT

ALTANA CORPORATION.....3RD RESPONDENT

DR. SALOME MUNUBI.....4TH RESPONDENT

JOASIAH OINDO.....5TH RESPONDENT

AND

KENYA RAILWAYS CORPORATION.....INTERESTED PARTY

RULING

What is before me for determination is whether the Consent dated the 30th October, 2019 and filed on 31st October, 2019, between the Petitioner and the 2nd Respondent should be adopted as an order of the Court.

The 2nd Respondent sought for the Consent to be adopted as an order of the Court. The said Consent was in respect to the reduction of the Award on the suit land NGONG/ NGONG/ 15559 that was compulsorily acquired. The Petitioner and the 2nd Respondent agreed to reduce the Award to Kshs. 850,696,581. 60. The Petitioner and the 2nd Respondent’s Counsel submitted that this Consent would compromise the Petition as its substratum will have been settled. They submitted that they would be no need to proceed with the Petition. The Petitioner’s Counsel submitted that the issue of costs could be deliberated on.

The 1st Respondent’s Counsel opposed the adoption of the Consent insisting that by reducing the amount of the Award, the Petitioner had actually usurped the role of the 1st Respondent to undertake compulsory acquisition as enshrined at Rule 3 of the Land Act (Assessment of Just Compensation) Rules, 2017 which directed that compensation should be paid to 2nd Respondent. Further that this was setting a dangerous precedent as the Petitioner could interfere with matters revolving around Compulsory acquisition of land which was its mandate. He insisted that they were not involved in the negotiation resulting in the consent. Further the Petitioner failed to adhere to the process of compulsory acquisition by undertaking an inquiry before preparing the said consent. He stated that the Petitioner had cast aspersions on the 1st Respondent’s reputation and it would be pertinent to correct that position. He opposed the release of the funds and insisted that the legal process had to be adhered to, before the said funds could be released. The Counsel further submitted that the 4th and 5th Respondents also opposed the adoption of the Consent as they wanted to clear their names. He reiterated that he was ready to proceed with the hearing of the Petition.

The 3rd Respondent’s Counsel submitted that they were not a party to the Consent and were also strangers to it as it was not served upon them. She insisted the same should not be adopted as part of the Court Record. Further, that they wanted to clear their name before the Petition could be terminated. She contended that they had been unfairly dragged into the Petition. Further, that the reason behind the Petition was public interest and the instant Consent seems to drop this angle. She sought to know from court if the suit land was properly valued and if the 1st Respondent had carried out its Constitutional mandate. Further, she submitted that she sought to know whether the 3rd Respondent had a role to play. She wanted the Petition to proceed to full hearing but was also ready to seek for costs.

The only issue for determination is whether the Consent dated 30th October, 2019 between the Petitioner and the 2nd Respondent should be

adopted as an Order of Court.

The fulcrum of the suit revolves around determination of the Award in respect of the 2nd Respondent's land which was compulsorily acquired by the 1st Respondent on behalf of the Interested Party for purposes of constructing the Standard Gauge Railway Line. The Petitioner had alleged the Respondents violated the Constitution and the Law by colluding to return an inflated Award in respect of the suit land. Further, that this would occasion public loss of funds. The Petition had already been set down for hearing and two of the Petitioner's witnesses had testified

From a reading of the Petition, it is evident that the principal parties therein are the Petitioner and the 2nd Respondent. I note the Consent reduced the Award from Kshs. 927,885,080 to Kshs. 850,696,581.60. The 2nd Respondent has acceded to the reduction of the Award in respect of suit land with a figure of Kshs. 77, 188, 498.40.

Before I make an Order as to whether the consent should be adopted or not. I wish to delve into the role of the Petitioner in the dispute herein. Article 79 of the Constitution which established the Petitioner mandated it to ensure compliance with and enforcement of provisions of Chapter 6 of the said Constitution. Further, section 4(2) of the Leadership and Integrity Act grants enforcement of the said statute to the Petitioner. It was the Petitioner's contention that in carrying out its mandate of investigating Corruption allegations as stipulated in section 11(d) of the Ethics and Anti -corruption Act, it realized the Award returned by the 1st Respondent which is a Constitutional Commission mandated to undertake compulsory acquisition of land on behalf of the government, returned an inflated Award in respect of the suit land. . In the instant Petition, the Petitioner contends that the compensatory award granted by the 1st Respondent to the 2nd Respondent is not the actual value of the suit land. The Petitioner had also enjoined two Directors of the 1st Respondent as 4th and 5th Respondents respectively, as they had been responsible for the process of compulsorily acquiring the suit land. It further enjoined the 3rd Respondent that had entered into a Consultancy Agreement with the 2nd Respondent in respect of the process of compulsory acquisition of the suit land.

From a perusal of the said Consent dated the 30th October, 2019, there is no indication that it is illegal or against public policy. Further, the Consent has culminated in a drastic reduction of the Award in respect of the suit land hence reduced the spending of public funds. I note in clause (5) of the said Consent, it only states that the matter is marked as settled between the Petitioner and the 2nd Respondent with no orders as to costs and interest. This in essence means that the matter between the Petitioner and the rest of the Respondents is yet to be determined. With the 2nd Respondent accepting the reduction of the Award, I do not foresee any prejudice the rest of the Respondents will suffer if the consent is entered between the two parties. Further, in clause (4) of the Consent, it has clearly indicated that Petitioner and the 2nd Respondent would seek further orders on disbursements of funds in the Kajiado HCCC No. 43 of 2018 (Altana Corporation versus Clarence Matheny Leadership Institute & Ethics and Anti Corruption Commission) hence the averments by the 1st Respondent's Counsel that the consent will culminate in the release of funds before adhering to the legal process is misleading. I reiterate that the adoption of the consent will culminate in saving taxpayers money. In the circumstance, I will proceed to adopt the Consent between the Petitioner and the 2nd Respondent only as an Order of the Court. The rest of the Respondents are at liberty to proceed with the Petition.

I so order.

Dated signed and delivered in open court at Kajiado this 7th day of November, 2019

CHRISTINE OCHIENG

JUDGE