



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

PETITION NO. 18 OF 2012

JOSEPH MUTEGLI.....APPLICANT

VERSUS

THE ATTORNEY GENERAL.....RESPONDENT

JUDGMENT

1. The petition filed on 7.8.2012 seeks the court's determination on the following issues:

- (i) Whether the commissioner of lands has compulsorily acquired the applicants Plot no. Nkuene/Mitunguu/761?
- (ii) Whether the applicant is entitled to prompt and adequate compensation of his acquired land and all the developments thereon?
- (iii) Whether the Kenya Rural roads authority demolished the applicants buildings worth 1,804,350/=?
- (iv) Whether the acquired land has been taken over by the state for purposes of constructing a road?
- (v) Whether the applicant's fundamental rights to be compensated promptly and adequately have been abused by the state agents?

2. The petitioner therefore prays for;

- (a) A declaration that his rights under Article 40 of the constitution of Kenya have been violated by state officers for failure to promptly and adequately compensate him for the compulsorily acquired land parcel No. Nkuene/Mitunguu/761.
- (b) Costs of the suit and interests.

3. The Attorney General was represented way back from 3.10.2013. Thereafter, the state counsel undertook to file a response to the petition while offering to explore a possibility of settlement- (see records of 31.7.2014). 4 years down the line no settlement was achieved and the attorney general did not file any response.

4. On 2.10.2017, the court gave directions for case to be heard by way of oral evidence. These directions were given in the presence of Mr. Kiongo for the Attorney General and Mr. Kimathi for petitioner. The court further gave the Attorney General an opportunity to file any documents they desired to file including pleadings. Documents for the Respondents (minus pleadings) were filed on 28.2.2018. However, the Respondent did not turn up for the trial scheduled on 16.5.2018. The case proceeded ex parte.

5. Petitioner's case is that he had a building at Mitunguu market on parcel no. Nkuene/Mitunguu/761. However his building was demolished without any notice for purposes of building a road.

6. In support of his case petitioner availed the following documents for court's consideration:

- (i) Copy of photographs
- (ii) Kenya gazette Notice
- (iii) Valuation report
- (iv) Title deed or L.R No. NKUENE/MITUNGUU/761

(v) Demand notice

7. I have wondered loudly as to why the Attorney General has been evasive regarding his participation in these proceedings. Why avail documents in support of their case on 28.2.2018 then fail to turn up for the hearing of the case?.

8. The document produced as P exhibit 2, is a gazette notice containing the following information;

“The Kenya gazette 16.10.2009. Meru – Marimba – Nkubu – Mitunguu Road Project.

Intention to acquire land

In pursuance of section 6 (2) of the land acquisition Act (cap 295), the commissioner of lands gives notice that the government intends to acquire the following land for the construction of Meru-Marimba- Nkubu- Mitunguu Road.....Nkuene/Mitunguu/761 ;Joseph Mutegi Kirugi 0.0050 ha” .

9. No evidence has been availed to indicate that this process was rescinded.

10. Article 40 (3) of the constitution provides that; **“The State shall not deprive a person of property of any description, or of any interest in, or right over, property of any description, unless the deprivation—results from an acquisition of land or an interest in land or a conversion of an interest in land, or title to land, in accordance with Chapter Five; or is for a public purpose or in the public interest and is carried out in accordance with this Constitution and any Act of Parliament that— requires prompt payment in full, of just compensation to the person; and allows any person who has an interest in, or right over, that property a right of access to a court of law”.**

11. Plaintiff’s property is hence protected by the supreme law of the land. And since the same was acquired by the Respondent, then he is entitled to compensation.

12. The valuation report availed by plaintiff indicates that the value of the land is 1,804,550. However, that report indicates that the affected portion is 0.050 ha, yet the land in total is 0.0297 ha. Perhaps the acreage of 0.05 is quoted in error since the gazette notice captures the acreage of 0.0050ha. Another issue to note is that the photographs availed as plaintiff exhibit 1, are photocopies. One is not able to discern the nature of the developments that were on site. In the circumstances, I will reduce the claim to sh. 1,500,000.

13. I find that on a balance of probability, the petitioner has proved his case. I allow the claim in the following terms;

(i) It is hereby declared that the Petitioners rights under Article 40 of the constitution of Kenya have been violated by state officers for failure to promptly and adequately compensate him for the compulsory acquisition of his land parcel No. Nkuene/Mitunguu/761 to the tune of 0.0050 ha.

(ii) The Respondent is ordered to compensate the petitioner damages to the tune of KSh 1 500 000 as compensation for the loss of Petitioners land.

(iii) The Respondent is condemned to pay costs of the suit and interest thereof, which interest shall run from 60 days from the date of delivery of this Judgment (to facilitate the implementation of the Judgment).

DATED, SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS 18TH DAY OF JULY, 2018

IN THE PRESENCE OF:-

Court Assistant: Janet/Galgalo

Gikonyo holding brief for Kimathi Kiara for petitioner

HON. LUCY. N. MBUGUA

ELC JUDGE