



**REPUBLIC OF KENYA**

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

**ELC CASE NO. 52 OF 1998**

**M'ITIMITU M'MWITHIA.....PLAINTIFF**

**VERSUS**

**DIOCESE OF MERU REGISTERED TRUSTEE.....1<sup>ST</sup> DEFENDANT**

**ROMANO KOBIA.....2<sup>ND</sup> DEFENDANT**

**JUDGMENT**

1. The dispute herein is very old. The genesis thereof emanates from a contract for sale of land which occurred in 1971 and the litigation has been running in various courts for decades. The history of the case is well captured in the Judgment of the court of appeal case no. 228/2012 (dated 31/7/2015), where it was stated inter-alia that;

**(i) “The appellant shall be compensated in the current value of the suit land to be paid to him by the 1<sup>st</sup> respondent at a sum to be assessed by the land and environment court at Meru upon hearing the appellant and the 1<sup>st</sup> respondent on the same.**

**(ii) The 1<sup>st</sup> respondent shall pay costs of this appeal and of the high court.**

**(iii) The matter shall be mentioned before the land and environment court at Meru at the beginning of the next court term for further direction in compliance herewith”.**

2. Consequently, the only issue for determination before this court is on compensation. Sadly, the road to this judgment has been rather bumpy primarily because of non-compliance with court's directions. On 13.6.2017, directions were taken on how the hearing of the suit would be undertaken as follows; **“By consent of all parties herein (1) the parties to file separate reports within 30 days from today. (2) Upon filing their respective valuation reports, the parties to exchange the same .....**”

3. These directions were never complied with by the plaintiff herein. Defendant on the other hand filed a valuation report on time but failed to call its maker even after promising to do so.

4. Eventually the court allowed plaintiff to give his oral testimony regarding the value of the land. Plaintiff testified that he stays on the suit land with his siblings. They have developments on the land where there are five timber houses. There are trees including various fruit trees. The family also rears domestic animals. Plaintiff was not precise on the actual value of the developments on the land as well as the land itself. He however stated that 1<sup>st</sup> respondent's valuation did not take into account the developments on the land and only valued the land at Shs. 3 million. However, in plaintiff's submissions, the figure of Shs.4,301,800 has been mentioned as the value of developments and Shs.3 million as value of the land.

5. The 1<sup>st</sup> defendant's valuation report indicates that those preparing the report had been unable to access the property due to hostility of the current occupiers of the property (read plaintiff). However inquiries from neighbors revealed that the parcel is developed with semi-permanent developments, which were disregarded in the report.

6. It appears that the parties are in agreement with the valuation of the land itself at Shs. 3 million. What is disputed is the value of developments.

7. This court can only make a determination based on the materials presented to it. The court has also taken into account that compensation was to be based on the **current market value**, which means that valuation ought to have been carried out immediately after the court of appeal Judgment. In reality, what happened is that **NOTHING HAPPENED**. The plaintiffs did not make any efforts to have this matter heard until the court on its own motion set the matter down for hearing on 25/5/2017 (two years after the court of appeal Judgment). All this time, the plaintiffs continue to occupy the land. They did not want their opponents to visit the land to carry out a full assessment, yet they were not keen on complying with court's orders in terms of conducting valuation on the property.

8. Against this back ground, and taking into account the evidence of the plaintiff vis a vis the report of 1<sup>st</sup> defendant. I will place the value of the developments at Shs. 1.2 million and the land itself at shs. 3 million.

9. **In total I proceed to value the compensation due to plaintiff from 1<sup>st</sup> defendant at Shs. 4.2 Million.**

10. It is so ordered.

**DATED, SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS DAY OF 17<sup>TH</sup> OCTOBER, 2018**

**IN THE PRESENCE OF:-**

C/A: Janet

Kiome for plaintiff/appellant

Ashaba holding brief for Mutgi for 1<sup>st</sup> defendant

**HON. LUCY. N. MBUGUA**

**ELC JUDGE**