



**REPUBLIC OF KENYA**

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

**ELC. CASE NO. 469 OF 2016**

**KENAFRIC BAKERY LIMITED.....PLAINTIFF**

**VERSUS**

**NATIONAL LAND COMMISSION.....1<sup>ST</sup> DEFENDANT**

**KENYA NATIONAL HIGHWAYS AUTHORITY.....2<sup>ND</sup> DEFENDANT**

**THE HON. ATTORNEY GENERAL.....3<sup>RD</sup> DEFENDANT**

**RULING**

The Plaintiff owned the land known as L.R. No. 13562/28 located in Ruiru (“the Suit Property”) a portion of which was compulsorily acquired by the Government of Kenya for the construction the Nairobi- Thika Highway under the Land Acquisition Act, Cap 295 Laws of Kenya (now repealed).

After the inquiry undertaken pursuant to the Land Acquisition Act, the award payable as compensation to the Plaintiff was assessed on 30<sup>th</sup> April 2012 as Kshs. 942,214,782 for the 1.1651 acres to be acquired. The Plaintiff reluctantly accepted this offer vide its letter of 7<sup>th</sup> May 2012 and duly signed the statement accepting the award and requesting payment of the compensation. The 2<sup>nd</sup> Defendant forwarded payment of the compensation sum on diverse dates between 25<sup>th</sup> June 2013 and 11<sup>th</sup> February 2015. The Plaintiff filed the instant suit claiming interest on the sum awarded which it computed at Kshs. 490,278,866/= as at 31<sup>st</sup> March 2015 and continues to accrue interest until it is fully paid.

The 2<sup>nd</sup> Defendant in its defence avers that the Plaintiff was fully paid the compensation award of Kshs. 942,214, 782/= and has no further claim against it since possession of the Suit Property had not yet vested in the 2<sup>nd</sup> Defendant. The 2<sup>nd</sup> Defendant argued that Section 19 of the Land Acquisition Act which sets out the procedure for taking possession of land that had been compulsorily acquired was not complied with and it had not taken possession of the land acquired. It further averred that under the law, payment of compensation was to be made as soon as practicable bearing in mind the budgetary constraints. The 2<sup>nd</sup> Defendant denies that it is liable to pay the Plaintiff interest at commercial rates or at all on account of the delay in paying the compensation award.

The 2<sup>nd</sup> Defendant filed the application dated 28<sup>th</sup> July 2016 seeking to strike out the suit on the grounds that the suit is frivolous, scandalous and vexatious as there is no law supporting the claim for interest. The thrust of the 2<sup>nd</sup> Defendant’s argument as the court understands it, is that interest is only payable on the amount awarded from the date of taking possession until the time of payment but in this case the 2<sup>nd</sup> Defendant is yet to take possession of the land acquired.

The 2<sup>nd</sup> Defendant further argues that this court lacks jurisdiction to hear this suit as it is barred by Section 67 of the Kenya Roads Act. This provision requires that at least a month's notice is given before the Authority is sued and that the proceedings are instituted within a year of the act or default complained of, or, in the case of continuing injury or damage, within 6 months after the cessation. The Plaintiff argues that it served the notice of intention to sue on the 2<sup>nd</sup> Defendant on 11<sup>th</sup> January 2016 and that it ceded possession of the acquired land on 30<sup>th</sup> June 2012 when it accepted the letter of award of the compensation.

The question this court has to determine is whether this suit ought to be struck out. The dispute relates to the demand for payment of interest on the award made pursuant to the compulsory acquisition of the Plaintiff's land in Ruiru. This court has jurisdiction to hear and determine disputes relating to compulsory acquisition of land pursuant to Section 13 of the Environment Land Court Act.

The 2<sup>nd</sup> Defendant argues that by virtue of Section 16 (1) of the Land Acquisition Act, interest on compensation is only payable where the compensation awarded is not paid before taking possession of the land. This dispute revolves around Sections 16 of the Land Acquisition Act, which reads:

*16.(1) Where the amount of any compensation awarded is not paid or paid into Court on or before the taking of possession of the land, the Commissioner shall pay interest on the amount awarded at such rate as may be prescribed which shall not be less than six per cent per annum from the time of taking possession until the time of payment or payment into Court.*

The 2<sup>nd</sup> Defendant maintains that the date of taking possession of the acquired land is 30 days from 17<sup>th</sup> May 2016 when the National Land Commission served a Notice of Taking Possession and vesting of title on the Plaintiff.

Section 19 of the same Act provides as follows:

*19. (1) After the award has been made, the Commissioner shall take possession of the land by serving on every person interested in the land a notice that **on a specified day, which shall not be later than sixty days after the award has been made**, possession of the land and the title to the land will vest in the Government.*

*3) Upon taking possession of land under subsection (1), the Commissioner shall also serve upon the registered proprietor of the land and the Registrar a notice that possession of the land has been taken and that the land has vested in the Government.*

This section presupposes that possession of the land and title to the land vests in the Government 60 days after the award. The award was made to the Plaintiff on 7<sup>th</sup> May 2012. Title to the land acquired from the Plaintiff ought to have vested in the Government 60 days from this date.

It was held in **D.T. Dobie & Company (Kenya) Limited v Joseph Mbaria Muchina & Another [1980]** eKLR that the jurisdiction to dismiss an action ought to be very sparingly exercised in exceptional cases.

After considering the pleadings, the application, the affidavits and the submissions made by counsels, the court is not satisfied that this is a plain and obvious case in which it ought to exercise its jurisdiction to dismiss the action. The court is of the view that this matter should go to trial so that it can determine the issue as to when the Government took possession of the Suit Property and whether the sum the Plaintiff claims is payable.

The application dated 28<sup>th</sup> July 2016 is dismissed with costs to the Plaintiff.

Dated and delivered at Nairobi this 20<sup>th</sup> day of July 2017.

**K. BOR**

**JUDGE**

In the presence of: -

Mr. Mwangi for the Plaintiff

Mr. Obok for the Defendant

Mr. V. Owuor- Court Assistant