



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT MACHAKOS

ELC. CASE NO. 19 OF 2015

PATRICK TUNDA MAINGI.....PLAINTIFF

VERSUS

KENYA ELECTRICITY TRANSMISSION CO. LTD....DEFENDANT

JUDGMENT

1. In the Plaintiff dated 28th January, 2015, the Plaintiff averred that it is the owner of land Plot No. 603 Kyondoni Adjudication Section (*the suit land*); that in the year 2014, the Defendant commenced the process of acquisition of way leaves, easements and permanent easements from several private land owners and that the Defendant has been making unilateral decisions in acquiring the suit land.
2. The Plaintiff's prayer is for a declaration that he is entitled to fair compensation for the acquisition of a way leave and easement over the suit land in accordance with the findings of an independent Valuer.
3. On 24th June, 2015, the Plaintiff and the Defendant's advocate entered into a consent which was adopted by the Deputy Registrar of this court.
4. The parties agreed to file written submissions in respect of five (5) issues which are: the fair market value per acre of the suit land; the market value payable as compensation for way leave acquisition, terraces, damages to crops and demolished structures; whether the Plaintiff should be paid for the terraces, damage to crops and demolished structures; whether the Plaintiff should be paid for the permanent way leave acquired for electric pole upon which the electric tower is to be erected and who should pay the costs of the suit.
5. It is on the basis of that consent that the Plaintiff and the Defendant's advocates filed their respective submissions.
6. The Plaintiff's advocate submitted that the fair market value of the suit land affected by the power supply lines and electric pylons is Kshs. 300,000 per acre pursuant to the valuation report of Prime Land Valuers Ltd.
7. Counsel submitted that the Defendant's Valuer undervalued the Plaintiff's land by giving a figure of Kshs. 150,000 per acre.
8. The Plaintiff's counsel submitted that based on the value of Kshs., 300,000 per acre, the total fair market value for the entire 2.28 acres affected by the power lines and electric pylons is Kshs. 684,000,

with Kshs. 205,000 each being payable for terraces, damage to crops and demolished structures respectively.

9. The Defendant's counsel on the other hand submitted that the market value for the purpose of acquisition of land shows the value of the land as at the date of publication in the gazette of the notice of the intention by the Defendant to acquire the land.

10. According to counsel, the market value of the land is therefore Kshs. 150,000 per acre.

11. The compensation of Kshs. 150,000 per acre, according to counsel, took into account the wayleave acquisition, terraces, damage to crops and the demolished structures.

12. The only issue for determination is the payable compensation to the Plaintiff for the acquisition of wayleaves, easements and damages of the crops and structures on the suit land.

13. Compensation in respect of public right of way is provided for under Section 148(1) of the Land Act. The said section provides as follows:

“148. Compensation in respect of public right of way.

(1) Subject to the provisions of this section, compensation shall be payable to any person for the use of land, of which the person is in lawful or actual occupation, as a communal right of way and, with respect to a wayleave, in addition to any compensation for the use of land for any damage suffered in respect of trees crops and buildings as shall, in cases of private land, be based on the value of the land as determined by a qualified Valuer.”

14. According to the report of Prime Land Valuers dated March, 2015, they valued the suit land on the basis that the land is an Agricultural property within Kindaruma Area, Machakos County. The Valuer defined the term market value as follows:

“Current market value is the estimated amount for which a property should exchange on the date of valuation between a willing buyer and a willing seller in an arm's length transaction after proper marketing wherein parties had each acted acknowledgeably, prudently and without compulsion.”

16. After relying on the “market comparative analysis approach,” which includes analyzing the sale of properties in the area, the said Valuer valued the suit land (*measuring 2.28 acres*) at Kshs. 650,000.

16. The Respondent's Valuer on the other hand gave the value of the land as Kshs. 75,000 per acre.

17. Unlike the report of Prime Land Valuers, the Respondent's Valuer's report did not describe the suit land at all neither did he state how he arrived at the figure of Kshs. 75,000 per acre.

18. It is trite that several factors always affect the value of land at any given time. These factors ought to be stated in the valuation report so as to enable the reader to understand how a Valuer arrived at a particular figure as the open market value of the land in question.

19. It is because of the detailed factors which have been enumerated in the Valuation of Prime Land Valuers, unlike the single page valuation report of the Respondent's Valuation that I arrive at the conclusion that the valuation of the suit land as at March, 2015 was Kshs. 650,000 for the 2.28 acres.

20. The Plaintiff has not placed any evidence before me to show that the Plaintiff incurred losses due to the acquisition of the suit land to the tune of Kshs. 615,000 as submitted by the Plaintiff's counsel.

21. For those reasons, and based on the valuation report of Prime Land Valuers, award the Plaintiff Kshs. 650,000 being the open market value of the land that was acquired by the Defendant.

22. The Defendant shall also pay the costs of the suit.

DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 22ND DAY OF SEPTEMBER, 2017.

O. A. ANGOTE

JUDGE