



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

ELC CASE NO. 185 OF 2017

PRICILLA KANYUA MWAMBA.....PLAINTIFF

VERSUS

KENYA URBAN ROADS AUTHORITY.....1ST DEFENDANT

NATIONAL LAND COMMISSION.....2ND DEFENDANT

RULING

1. The Notice of Motion dated 23rd June 2017 seeks the following Orders:-

a) THAT the defendants, their servant, employees or agents claiming under the name be restrained by way of temporary injunction from entering, cutting down trees, digging trenches, pouring building materials, digging or grading roads or in any way interfering with the plaintiff's parcel of land plot No. NTIMA / NTAKIRA/540 until hearing and determination of this application and pending hearing and determination of this suit.

b) In the alternative, status quo of the suit land prevailing at the time of filing this suit be maintained; in that the plaintiff to remain in peaceful and uninterrupted occupation of her land until hearing and determination of this application and suit.

c) Any other relief that Court deems to grant.

2. The application is based on the following grounds:-

i) THAT the plaintiff has been partly compensated for the parcel above up to 0.357 hectares instead of the actual 0.424 hectares and the defendants have declined to compensate for the remaining balance of 0.67 hectares.

ii) THAT the plaintiff has complained and a repeat of the survey confirms that the hectares are 0.424 hectares.

iii) THAT the plaintiff has written to the defendants requesting for valuation of the property at current and correct value but they have declined to act.

iv) THAT the defendants intends to construct the Meru Eastern –Western by-pass without fully compensating the plaintiff.

3. The application is supported by the Affidavit of PRISCILLA KANYUA sworn on 23rd June. 2017

where she states as follows;

- 1) That in the year 2015 Applicant was contacted by the defendants through a letter/award and was informed that her land Ref No. NTIMA / NTAKIRA/540 would be compulsorily acquired to necessitate the creation of the Meru Eastern – Western by-pass road. Annexed is the letter dated 30/6/15 marked PK1.
- 2) That Applicant's land has developments on it including trees (Meru Oak, Muringa, Eucalyptus, Blue Gum) and tea bushes which according to the letter/award were to be valued together with the land.
- 3) That upon gazettelement ,the acreage shown was 0.357 hectares instead of 0.424 hectares as per Annexure PK2, a copy of the Kenya Gazette.
- 4) That she complained and the survey was repeated confirming that the land was indeed 0.424 hectares and a letter was forwarded to the 2nd defendant indicating the same and this is supported by Annexure PK3, a copy of the letter dated 8/4/16.
- 5) That the defendants herein have refused and / or declined to compensate Applicant for the balance of 0.067 hectares.
- 6) That they undervalued her property and she wrote letters to the defendants indicating the same and requesting that valuation be done with the current trends. .
- 7) That now the defendants have started digging the road threatening to cut down all trees and other plants, pull down all her properties so that they can create an access road through applicants piece of land.
- 8) That the respondent should be restrained from doing anything on Applicant land until a proper valuation is carried out.
- 9) That the 2nd respondent was funded by the Government so that they could compensate everyone adequately and fairly but they declined.
- 10) That the respondents are adamant and will create a road and leave Applicant with her problems unsolved.

On 16.10.17, the application was heard after the Court was satisfied that service had been effected.

Applicant avers that he has partly been compensated but that after resurveying was done, it was found that he has not been compensated to the tune of 0.067 hectares.

It is averred that applicant has tried to have the matter resolved in vain.

Having looked at the annexures herein, I am inclined to find that the application is merited.

The application of 28.6.17 is allowed in terms of prayer 2 but for a period of 8 months.

Costs in the cause.

DATED, SIGNED AND DELIVERED AT MERU THIS 6TH DAY OF DECEMBER, 2017 IN THE PRESENCE OF:-

C: A Janet

Nelima H/B for Mrs. Kaume for Applicant present

No appearance for Respondent

Hon. L. N. MBUGUA

ELC JUDGE