



Chillington Investments Limited v National Land Commission & another (Environment & Land Case E023 of 2023) [2024] KEELC 3460 (KLR) (30 April 2024) (Ruling)

Neutral citation: [2024] KEELC 3460 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E023 OF 2023**

**JA MOGENI, J
APRIL 30, 2024**

BETWEEN

CHILLINGTON INVESTMENTS LIMITED PLAINTIFF

AND

NATIONAL LAND COMMISSION 1ST DEFENDANT

KENYA NATIONAL HIGHWAYS AUTHORITY 2ND DEFENDANT

RULING

1. By a Complaint dated 18/07/2023 the Plaintiff – Chillington Investments Limited – moved the Court as the registered owner of Plot No. 214/203, sub plot 2 House Type D situate off Muthaiga Road Nairobi seeking relief against the 1st and 2nd Defendant for payment of interest from an award was made on 28/07/2010. As at 23/03/2023 the plaintiff alleges that the interest due was Ksh 8,335,729.
2. That despite demand being made and threat to sue the defendant has failed to pay the interest due.
3. Before the suit could be set down for hearing the defendant filed a two point preliminary objection seeking to have the suit dismissed on a point of law in limine on the following grounds:
 - a. The suit has been filed in breach of the mandatory provisions of section 67 (a) & (b) of the *Kenya Roads Act, 2007*
 - b. The suit offends Section 7 of the *Civil Procedure Act, Cap 21 Laws of Kenya* for being res judicata, the same issues having been conclusively disposed of by the Land Acquisition Compensation Tribunal in Nairobi via its ruling dated 28th July 2010.



- c. As a result, the Honorable Court lacks the requisite jurisdiction to hear and determine the suit by virtue of Section 67 (a) & (b) of the *Kenya Roads Act* No. 2 of 2007, and Section 7 of the *Civil Procedure Act*, Cap 21.
4. On 21/11/2023 when the parties appeared in court to agree on disposal of the application, the plaintiff was granted three (3) days to file a response to the application and upon being served with submissions to subsequently file their submissions within the time allocated. At the time of writing this ruling, the plaintiff had neither filed a response nor submissions to the application.
5. The 2nd defendant/applicant filed their submissions dated 9/02/2024. The 1st defendant did not participate in the application.
6. The plaintiff pleaded that he was not paid the statutory 6% interest on the additional award after lodging an appeal on the award made on 8/12/2008.

Analysis and Determination

7. I have considered the written submissions by counsel of the 2nd defendant, the authorities cited and the law. The preliminary objection challenges the jurisdiction of this court to hear the instant suit on the ground that sections 67 (a) and (b) of the *Roads Act* sets a time limit within which an action of this nature can be brought to this court.
8. The jurisdiction of this court is provided for clearly under Article 162 (2) (b), of the *Constitution*. It provides that the ELC has mandate to hear disputes relating to the environment, the use and occupation of, and title to, land. Further Section 13 (1) of *ELCA* elaborates the jurisdiction of the court and provides that the ELC has both original and appellate jurisdiction to hear all disputes relating to environment and land. Such disputes will include, as provided in Section 13 (2) (a), disputes relating to environmental planning and protection, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources. Section 13 (2) (e) makes it clear that what is set out in (a) to (d) above it, is not conclusive, and provides that the ELC can hear any other dispute relating to environment and land.
9. Therefore, the contention that this court has no jurisdiction to hear the instant suit is erroneous.
10. The applicant/respondent on the issue *res judicata* alleges that the issues raised in the plaint were already settled by the Tribunal. Further that the statutory time for making such claims made by the plaintiff has lapsed.
11. The acquisition was under the *Land Acquisition Act*, Cap 295, Laws of Kenya and the plaintiff was awarded Ksh 19,464,900 on 31/08/2009 but the plaintiff states that he appealed since he considered that the payment was very low and based on the valuation they were entitled to much more. It is on the basis of the second payment of Ksh 4,391,725 on 29/04/2015 which was an upward addition that he seeks to be paid interest at 6%.
12. It is not in dispute that the alleged cause of action arose in the year 2008 upon the respondents' acquisition of the plaintiff's property. It is also not in dispute that the upward addition was done in 2015 following an appeal to the Tribunal which delivered its ruling in 2010.
13. The issue of interest is arising out of the second or additional payment made in 2015 which entitled the plaintiff to an award of 6% which from the documents filed in court was not made.



14. Section 4 (1) (e) provides that an action may not be brought after the end of six years from the date on which the cause of action accrued:

“...actions, including actions claiming equitable relief, for which no other period of limitation is provided by this Act or by any other written law.”

15. I note that the plaintiff did not take any action for five (5) years from 2010 to 2015 when the upward addition was paid and thereafter for another eight (8) years they did not seem to want to stake their claim until 2023 when the instant suit was filed.

16. Now equity as always does not aid the indolent it aids the vigilant. There is not plausible explanation given why it took a whole eight (8) years for this claims to be filed in court. I clearly see where the plaintiff is coming from but unfortunately he chose to ignore his entitlement which with effluxion of time dispatated, just like that.

17. Limitation of time for land claims as with claims of any other nature exist for three main reasons which are:

- i. A plaintiff with a good cause of action ought to pursue it with reasonable diligence (equity does not aid the indolent);
- ii. A defendant might have lost evidence over time to disprove a stale claim; and
- iii. Long dormant claims have more cruelty than justice in them (Halsbury’s Laws of England, 4th Edition.)

18. Since the plaintiff has clearly stated that he was compensated even after appealing to the Land Acquisition Tribunal it follows therefore that whereas the issue of interest was canvassed at the appeal he failed to make a timely follow up.

19. Given the foregoing, just as brief as the plaint is I do agree with the applicant/respondent in finding that time has overtaken this claim on payment of interest on the award made to the plaintiff. I do find that the preliminary objection is merited and I make the following orders:

- a. The suit has been filed in breach of the mandatory provisions of section 67 (a) & (b) of the *Kenya Roads Act, 2007*.
- b. The suit offends Section 7 of the *Civil Procedure Act, Cap 21 Laws of Kenya* for being res judicata, the same issues having been conclusively disposed of by the Land Acquisition Compensation Tribunal in Nairobi via its ruling dated 28th July 2010.
- c. I will make no order as to costs, each party will bear their own costs.

It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 30TH DAY OF APRIL 2024.

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MOGENI J

JUDGE

In the virtual presence of: -

Mr.Ochieng holding brief for Prof. Mumu for the 2nd Defendant/Applicant



Mr. Kinyanjui for the Plaintiff/Respondent

Ms. Caroline Sagina: Court Assistant

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MOGENI J
JUDGE

