Case Number:	Land Acquisition Act Appeal 1 of 1981
Date Delivered:	29 Nov 1984
Case Class:	Civil
Court:	High Court at Nairobi (Milimani Law Courts)
Case Action:	Judgment
Judge:	James Onyiego Nyarangi
Citation:	Kanini Farm Ltd v Commissioner of Lands [1984] eKLR
Advocates:	-
Case Summary:	**Kanini Farm Limited *v* Commissioner of Lands** High Court, at Nairobi November 29, 1984 Nyarangi J Land Acquisition Act Appeal No 1 of 1981 ***Compulsory acquisition*** *- of land – by government – under the Land Acquisition Act (cap 295) – compensation upon acquisition – assessment of adequate compensation – basis of value – where land was originally agricultural – application for change of user made – change of user approved before acquisition - whether compensation should be based on value of residential property as opposed to agricultural property – factors to be considered when assessing the value.* ***Compulsory acquisition*** *– of land – by government – payment of compensation – proper recipients of compensation – factors to be considered when assessing value – whether speculative value should be taken into account.* The appellants' land was compulsorily acquired

by the government under the Land Acquisition Act (cap 295). The appellant challenged the compensation awarded on the grounds that it valued the property as agricultural land when there had been a change of user to residential and that some of the recipients of compensation were trespassers of the land among other issues.

Held:

1. A person whose land is acquired is entitled to prompt payment of full compensation as a result of the acquisition as provided for under section 75 (1) (c) of the Constitution and section 8 of the Land Acquisition Act (cap 295).

2. When land is compulsorily acquired under the Land Acquisition Act an inquiry to determine the persons interested in the land, the value of the land and the compensation to be paid must be held as required by section 9 (3) of the Act.

3. Market value as a basis for assessing compensation is the price which a willing seller might be expected to obtain from a willing purchaser, the purchaser may be a speculator but a reasonable one.

4. The changes of user of the suit land, from agricultural to a residential character was approved before the acquisition, therefore it was fair and just that the property should be treated as residential in assessing compensation.

5. In determining the amount of compensation which ought to be paid the court should take into account comparable sales and awards on other acquisition of land of similar character.

6. The burden is on the appellant challenging the adequacy of the compensation to prove that the award of compensation is wrong.

Appeal allowed, award increased accordingly.

Cases

1. *Many v The Collector Under Indian Land Acquisition Act* [1957] EA 125

	2. *New Munyu Sisal Estates Ltd v Attorney-General* [1972] EA 88 3. *Collector v Heptulla* [1968] EA 555 4. *Collector v Kassam Shivji Bhimji* [1959] EA 1063 **Statutes** 1. Land Acquisition Act (cap 295) sections 8; 9(1),(3); 20 2. Constitution of Kenya section 75(1)(c) 3. Indian Acquisititon Act 1894 4. Schedule to the Land Acquisition Act rules 2,3
Court Division:	Land and Environment
History Magistrates:	-
County:	Nairobi
Docket Number:	-
History Docket Number:	-
Case Outcome:	Appeal allowed, award increased accordingly.
History County:	-
Representation By Advocates:	-
Advocates For:	-
Advocates Against:	-
Sum Awarded:	-

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

LAND ACQUISITION ACT APPEAL NO. 1 OF 1981

KANINI FARM LTD.....APPELLANT

VERSUS

COMMISSIONER OF LANDS.....RESPONDENT

JUDGMENT

On 3rd April 1981 the Commissioner of Lands invoked the Land Acquisition Act (cap 295), Kenya Gazette Notice Numbers 2248 and 2249 dated August 1980 and 2942 dated September 26 1980 to serve notice on the appellant that he had taken possession of approximately 0.571 hectare of land LR No 9461/4 pursuant to section 9(1) of the Act. The appellant was requested under section 20 of the Act to deliver the documents of title to the Principal Registrar of Titles for amendments. An award of a total amount of Kshs 198,115 was made as compensation to all the persons interested in the land. The appellant's share of the award is Kshs 16,215. This appeal is on the grounds set out below:

1. Decision pursuant to section 10 of the Land Acquisition Act awarding Kshs 16,215 compensation delivered on January 6, 1981.

2. Land – 0.571 of a hectare of L R No 9461/4, Juja.

3. The appellant will rely upon the following special facts in support of the appeal:

(a) That the appellant applied for sub-division consent and residential user on August 8, 1978 and at that time the appellant had no knowledge of the proposed (missing words)

(b) That the Central Land Authority consented in principle to such sub-division and change of user on the March 26 1979;

(c) That the seven other recipients of compensation in respect of the acquisition of this land are trespassers, who have received compensation for residential structures erected on the land;

4. The question for the determination of the Court is the amount of compensation payable to the appellant.

5. The appellant will rely in support of the appeal on the following grounds:

(a) The compensation should be calculated on the basis of residential user;

(b) Alternatively the potential for residential user should have been considered in deciding the amount of compensation;

(c) The whole compensation should have been awarded to the appellant as the only person registered as owner of the land or otherwise lawfully interested therein.

6. It is intended to adduce expert evidence as to the question of valuation

It is an appeal against the award of compensation upon the acquisition of the land by the Government. Mr Fraser for the appellant said the appellant purchased the land agricultural land in 1977, which was previously owned by a firm in receivership, that the land projects from the northern corner of the farm and was invaded by squatters during he period of receivership but that the appellant separated the parcel from the main land, that on August 8, 1978 an application was made to the Commissioner of Lands for permission to sub-divide and for change of user so that the area could be used as a residential land but that while the application was before the Commissioner of Lands and the Central Authority, a notice of acquisition appeared in the Kenya gazette on August 1, 1980. Mr Fraser said that at the hearing of the inquiry which was held under the provisions of the Act, the appellant conceded that the structures on the land acquired were the property of the squatters and there was some doubt if the awards made to the squatters included something in respect of the land. At the inquiry the appellant intended that the land acquired should be given a residential value because of the use of the land by squatters as a residential area and because of the application for change of user. That was not accepted at the inquiry and so the land was given an agricultural value.

The next step was on April 22, 1981 when the appellant was informed by the Central Authority that permission for sub-division and change of user had been approved on March 26, 1979 ie before the acquisition and in March 1981, the appellant was able to sell the residue of the strip of land to a group of squatters for Kshs 70,000.

Mr Fraser argued that the court has to look at the sale to determine the correct value of the land, and that if the court were to find that the land was not residential, the agricultural value given was in any event too low, the appellant ‘s contention being that at the time of the acquisition change of user had been given. A director of the appellant told the court that the appellant purchased the material property at the price of Kshs 450,000 in 1977. Prior to the purchase, the farm had been neglected and squatters allowed on the northern limb, which portion the appellant tried to sell before approval was given for change of user. The director said he continued negotiations with representatives of the squatters after the acquisition and that eventually he reached agreement for sale of the residue at a price of Kshs 700,00 but the sale has not been completed.

A chartered surveyor who was instructed to represent the appellant at the inquiry but who did not appear, said he had been to the land, seen the surroundings, prepared a report – Ex L and a plan Ex M. The report and the plan were the surveyor’s views of the value of the land and of the damages suffered as a result of the acquisition. Under cross-examination, the surveyor said the area had become an urban area as there was the actual occupation and the owners had applied to the commissioner for change of user and for permission to sub-divide, that each structure was worth about Kshs 30,000, that the residential user could be slightly more, that the urban value per acre is Kshs 64,000 and the farm value Kshs 40,000 per acre. The respondent called two witnesses. A Lands Officer recognized Ex E and said there had been no final approval for subdivision but admitted, when cross-examined, that the approval was finally granted vide Ex N.

A valuer who did the valuation of the suit land said the amount of land to be acquired is 0.57 hectares ie about 1.41 acres, the inquiry which he chaired, was held on December 1, 1980, that Mr Bhatt submitted a claim, Ex 9 but that he , the valuer, argued that the land should not be considered as having any residential value;, that as at the time of the gazettement the land was agricultural in status, that the land, 122 acres, was bought in 1977 during the coffee boom at a figure of Ksh 50,000, which worked out at about Kshs 3,700 per acre, that he had successfully negotiated adjacent land for a sum of Kshs 3,500 per acre and that the land was similar in character, but that Mr Bhatt argued that the land should be paid

for with a sub-divisional potential and that the price per acre was Kshs 30,000. Mr Bhatt did not produce evidence of the sub-divisional approval . Nor did Mr Bhatt show evidence of any sales to support their claim. The valuer then considered the facts and concluded that Kshs 10,000 per acre which was about 3 times the amount the owner had paid about 3 1/2 years earlier was fair and reasonable. The award included money paid to the squatters for their structures. As regards Ex l, whose valuation was done after the acquisition, the value considered the figures used are extravagantly high considering the amount of money the land was paid for and the period of time. The latter sale of the northern limb for Kshs 700,000 has no bearing on the suit land.

Cross-examined, the valuer stated inter alia, that at the time of the inquiry he knew an application had been made for change of user and for subdivision but that consent had not been given that he would not have any quarrel with the valuation of the appellant's surveyor of the land as residential at Kshs 16,000 per acre if the plots had separate titles, that there was no valuer on the other side in the valuer's negotiations, that the suit land is not the best farming land – it is mostly black cotton soil and murram and he would not put it at more than Kshs 20,000 per acre ie Kshs 50,000 per hectare and that the operation of the Jomo Kenyatta of Agriculture and Technology has increased the value of the land as people will buy land for speculative purposes due to the increased population and expectancy of future town and so affect user of land.

The appellant is entitled to prompt payment of full compensation as a result of the acquisition; section 75 (1) (c) of the Constitution of Kenya and section 8 of the Land Acquisition Act, Cap 295 (the Act). An inquiry was duly held: section 9(3) of the Act. There was unchallenged evidence that Mrs Mburu, who attended the inquiry proceedings with Mr Bhatt on behalf of the appellant consented to the owners of the structures being paid for the structures, not for the land in which the squatters had no interest.

In considering the one issue raised by this appeal, to wit, whether the land should be valued as residential the meaning of "Market Value" as given in rule 1 of the Schedule to the Act is borne in mind as also the exclusive matters to be taken into consideration set out in rule 2 of the Schedule and the matters to be ignored which appear in rule 3.

Understandably, there is a divergence of opinion as regards market value because the appellant worked their figures on the basis that the material plot is residential or alternatively that it is an attractive agricultural holding whereas the respondent's evaluation is for agricultural land which is not of the best type.

The market value as the basis for assessing compensation is the price which a willing seller might be expected to obtain from a willing purchaser, a purchaser who though he may be a speculator, is neither a wild nor an unreasonable speculator: See *Many v The Collector* [1957] EA 125, which was an appeal from a decision of the supreme court of Kenya on a reference to that court under the Indian Acquisition Act, 1894. However, the measure of compensation under the Indian and the Kenya Acts is the same; *New Munyu Sisal Estates Ltd v Attorney General* [1972] EA 88.

There was clear evidence that the appellant's application for authority to sub-divide the suit land and for change of user was approved by the Central Authority on March 26, 1979 subject to conditions which the appellant accepted on May 25, 1981. There is therefore no substance in the contention by learned state counsel that there had been no final approval before the acquisition. The approval for sub-division and for change of user conferred a residential character on the suit land and it is only fair that the property should be treated as residential in assessing compensation: *May v Collector,* (*supra*) at page 126.

It is proper for the court to take into account comparable sales in determining compensation. There was evidence of awards on other acquisition of land similar in character ie agricultural land. The question immediately arises if there is sufficient credible evidence of comparable sale. The appellant claims they sold the remainder of the land for Ksh 700,000. The evidence was that the appellant was selling 13.5 acres to the squatters following a lump sum agreement. The parcel of land had not been surveyed although it was supposed to be 20 acres. As evidence of sale, Ex H was produced. But what is the nature and substance of Ex H" It is hand-written. It is unsigned. There is a carbon copy of some other original attached to Ex H which is signed. The substance of Ex H is to the effect that the directors of the appellant did on June 13 1981 receive cash and cheque totaling Ksh 111,570 from named estate agents whose address is given being part purchase price of land approximately 20 acres, the price being Kshs 700,000. There is no agreement of sale shown and no acceptable and usual proof of receipt of Kshs 11,570. The court is urged to regard this as evidence of comparable sale in assessing compensation to be paid out of public funds to the appellant. I might have been inclined to doubt the comparable sale of Kshs 700,000 but the respondent's valuer would accept the appellant's value of Kshs 16,000 per plot which is based on the sale of Kshs 700,000. I accept the comparable sale with hesitation. There is, however, the evidence of the appellant's surveyor and the respondent's value which evidence is relevant and helpful: *Collector v Heptulla* [1968] EA 555, and whose facts fall to be examined in making my own assessment of the compensation because I am not bound by the view of the respondent's valuer: *Collector v Kassam Shivji Bhimji* [1959] EA 1063. I must yet temper my assessment with liberality. The burden is on the appellant to prove that the award of compensation is wrong.

The respondent's valuer was told by the representatives of the appellant at the inquiry that the suit land should be paid for with a sub-divisional potential and that plans for sub-division had been submitted to the commissioner of Lands for approval. No documentary evidence of any submission was produced to the respondent's valuer. Yet, in the circumstances, the valuer/chairman of the inquiry should have stood over the inquiry to ascertain if there were sub-divisional plans submitted. He knew that an application had been made for change of user and subdivision. In my judgment a factor had been argued before the chairman which touched the issue of compensation in a real way and the Chairman was duty bound to hold his hand. The fact that the Chairman asked for proof of submission of sub-divisional plans is some indication that he was aware that compensation to be paid was likely to be enhanced by approval of sub-divisional plans. The appellant has produced evidence that approval was given for change of user and for sub-division before the acquisition and before the inquiry. The effect of that is that the respondent's offer or award is shown to be wrong. That is not to say that the value suggested by the appellant is entirely right. The respondent's valuer would have no quarrel with the appellant's valuation of the land as residential of Ksh 16,000per acre. Having held that the land would not fairly and reasonably be regarded as other than residential property, I proceed, to assess compensation on the basis of the material and figures in Ex L, The valuation in Ex L is acceptable to the respondent if the material property is treated as residential. So the situation here is distinguishable from the facts set out in *Collector v Heptulla supra* at page 557 where the evidence of experts disclosed differences. On the evidence in Ex l, the fair value of a building plot is Kshs 16,000 each The value of residential land taken, basing it on the value of each plot is Kshs 84,000. That is a reasonable figure and so is the sum of Kshs 22,000. The appellants are entitled to be paid cost of re-designing plot layout and for reduced value to the remaining plots. The cost of the two items should in the circumstances cover any injurious affection to the remaining land. I would award a sum of Kshs 15,000 for general effect on unacquired land.

The appeal is allowed and the respondent's award of Kshs 16,215 is increased to Kshs 121,000 as full compensation. Costs of the appeal to the appellants. Leave to appeal.

Dated and Delivered in Nairobi this 29th day of November 1984.

J.O.NYARANGI

JUDGE