**Railways Corporation v Kisumu Municipality**

**Division:** Court of Appeal at Nairobi

**Date of judgment:** 30 August 1974

**Case Number:** 12/1974 (87/74)

**Before:** Sir William Duffus P, Mutafa and Musoke JJA

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**Appeal from:** High Court of Kenya – Platt, J

*[1] Rating – Valuation – Public land – Minister has power by rules to alter method of valuing Public*

*land – Valuation for Rating Act* (*Cap.* 266), *ss.* 8, 26 (*K*)*.*

**JUDGMENT**

The following considered judgments were read. **Sir William Duffus P:** This is an appeal under the Valuation for Rating Act (Cap. 266) and concerns a dispute between the Kisumu Municipality, the Local Authority, the respondent in this appeal, and the east African Railways Corporation, the rateable owners of the land in question, the appellant. The first appeal from the valuation went to a valuation court and then to the High Court, and now to this court. In the appeal in the High Court the preliminary issue was argued as to whether r. 7 of the Valuation for Rating (Public Land) Rules 1967 was intra vires ss. 8 and 26 of the Valuation for Rating Act. The judge decided that the rule was intra vires the provisions of the Act and the appeal to this court is against his decision on this issue. The question depends on the interpretation of s. 26 of the Act, the relevant portion of which states: “26. ( 1) N otwithstanding anything to the contrary contained in this Act, but subject to the provisions of this subsection, Organisation land which would, if it were not Organisation land, be rateable property under this Act shall, for the purposes of assessing the contribution in lieu of rates payable by the Organisation under any law providing for the imposition of rates on the value of land by a local authority, be valued in accordance with the principles laid down in this Act, in such manner and subject to such exceptions as may be prescribed by rules made by the Minister: Provided that such rules may exempt from such valuation and from payment of any contributions in lieu of rates as aforesaid Organisation land which is being used for a public purpose, or may exempt from payment of any contributions in lieu of rates as aforesaid Organisation land which should, in the opinion of the President, be exempted on the ground that it is intended to be used for a public purposeThe issue really depends on the construction of the words “to be valued in accordance with the principles laid down in this Act, in such manner and subject to such exceptions as may be prescribed by rules made by the Minister.” It is necessary in considering these words to first consider the Act as a whole. The Valuation for Rating Act is, to quote the preamble, “an Act of Parliament to empower Local Government authorities to value land for the purpose of rates; and for purposes incidental to or connected therewith.” The Act then sets out how this valuation should be effected. Thus s. 3 sets out the mandatory provision for the preparation of a valuation roll by the Local authority. S. 4 deals with the amendment of or preparation of a supplementary roll. A valuer is defined by the interpretation of s.2 and his powers and duties are set out in s. 5. S. 6 states the contents of the valuation roll and differentiates as does the Act as a whole between the valuation of land and that of “unimproved land”. The judge found s. 8 as being the section that could be said to set out the principles of valuation. The marginal note of s. 8 describes the section as being the basis of valuation and in fact s. 8 does set out the manner or method of arriving at the valuation both of land and of unimproved land. The rules made by the Minister which form the subject of this action appear to modify or change the basis of valuation as laid down by s. 8 and the issue is whether the Minister had the power to do this. Did this modification come within the meaning of the words “in accordance with the principles laid down in this act, in such manner and subject to such exceptions as may be prescribed by rules made by the Minister”? It is necessary to consider the provisions of s. 8 and also the provisions as laid down by the Minister in rules. This is a question of the valuation of unimproved land and s. 8 (2) provides: “(2) The value of unimproved land shall, for the purposes of a valuation roll or supplementary valuation roll, be the sum which the freehold in possession free from encumbrances therein might be expected to realise at the time of valuation if offered for sale on such reasonable terms and conditions as a bona fide seller might be expected to impose, and if the improvements, if any, thereon, therein or thereunder had not been made, due regard being had, not only to such particular land, but also to other comparative factors and to any restrictions imposed on the land, and on the use of the land, by the local authority or a town planning authority by or under any by-laws or town planning powers, being restrictions which either increase or decrease the value of the land.” The method for valuation as laid down by this subsection may be divided into five parts, that is (i) the valuation shall be the sum which the freehold in possession free from encumbrances therein might be expected to realise (ii) on such reasonable terms and conditions as a bona fide seller might be expected to impose (iii) without regard to any improvement (iv) but regard being had, not only to the particular land but also to other comparative factors (v) and regard also being had to any restrictions imposed on the land or use of the land by any local authority or town planning authority. The rule in question, r. 7 of the Valuation for Rating (Public Land) Rules, 1967, states: “7. In valuing land belonging to one of the bodies mentioned in rule 3 (2) of these Rules, the land (whether or not it is exempt from payment of contribution in lieu of rates under rule 5 of these Rules) shall not be taken to be, or to have been at any time since the 1st January 1966, restricted in use to the purposes of that or any like body or to any other railway, harbour, postal, telecommunication or (after the 1st December 1967) aviation purpose, notwithstanding anything, ( *a*) i n section 8 of the Act, or ( *b*) a ppearing on any plan or planning scheme (whether or not such plan or scheme is operative or enforceable in law), and the land shall be valued without regard to any such restriction and accordingly without regard to the profitability, whether actual, notional or potential, of that body or any like body, but the land shall be valued with regard to the best use to which the land can be put and the suitability of the land for that use in comparison with other land in the vicinity.” The rule itself is by no means clear in its meaning and I can foresee that the court will have difficulty in its interpretation, but it does appear to affect the basic principles or methods of valuation as laid down by s. 8. It endeavours to qualify its principles whilst apparently retaining the majority of the principles as set out in s. 8. Thus according to rule 7 the valuation shall not take account of any restriction appearing on any plan or planning scheme whether or not this scheme is operated or enforceable in law, but the rule states that the land should be valued with regard to the best use that it can be put, so that it does appear to me that in applying this rule regard must be had to any legal and enforceable restriction which would apply to the land. This would restrict the term “the best use to which the land can be put”. The construction of this rule does not however arise in this case. The question is whether the Minister had the power to make these rules by virtue of s. 26. The marginal note to s. 8 of the Act describes the section as setting out the basis of valuation. This could equally well be described as setting out the method or manner of valuation. What the section does do is to set out the basic rules to be applied by the valuer in arriving at his valuation for the purpose of the rate or tax to be paid by the rateable owner. The words “in such manner” as used in s. 26 are, in my view, words of wide import and I cannot, with respect, agree with Mr. Wilkinson for the appellant that they should be restricted in application to mean only the procedure used in valuation rather than the basic principles or methods of valuation. In s. 8 (3) the law specifically states that in arriving at the “value of land” under this section the valuer may adopt any suitable method of valuation. In s. 26 the use of the words “in such manner” could hardly, in my view, refer to the procedure adopted by the valuer in arriving at his value. These words are used with reference to the principles laid down in the Act and not to the procedure. Ss. 9 to 21 of the Act to which Mr. Wilkinson referred us, refer to matters affecting the preparation and deposit of the valuation roll and the approval and the setting up of valuation court to go into the matter if the valuation is contested. Again in my view, these sections could not have been intended to have been referred to in s. 26 of the Act. “Manner” as defined in the Oxford English Dictionary, *inter alia*, is (*a*) the way in which something is done (*b*) the method of procedure or (*c*) the method of action. The words “notwithstanding anything to the contrary” contained in the Act as set out at the commencement of s. 26 shows the intention of the legislature to give the Minister specific powers to alter or modify the principles or method of valuation otherwise laid down in the Act. In my view the words “in such manner” contained in s. 26 empowers the Minister to change the way or method in which the valuation is arrived at so that the Minister does have the power to change or modify the principles of valuation as set out in s. 8. The words following immediately after in s. 26 “subject to such exceptions” supports the view that the legislature intended that the Minister had power to alter the basic principles of valuation as set out in s. 8. I agree therefore with the trial judge that r. 7 of the Valuation for Rating (Public Land) Act 1967 is intra vires the powers of the Minister. I would therefore dismiss the appeal and I would grant the respondent the costs of this appeal and remit the matter to the High Court to continue the hearing of the appeal, order the costs in the High Court to be in the discretion of that court when further dealing with the appeal, and, as both Mustafa, J.A. and Musoke, J.A. agree, it is so ordered. **Mustafa JA:** I have read the judgement prepared by the President and agree that the appeal must be dismissed. The issue in this appeal is whether r. 7 of the Valuation for Rating (Public Land) Rules 1967 is ultra vires s. 8 and s. 26 of the Valuation for Rating Act (Cap. 266), (hereafter called the Act). S.8 (2) of the Act lays down the principles or bases for valuation of unimproved land. I need not reproduce it here. S. 26 of the Act gives power to the Minister to make rules to assess contributions payable in respect of Organisation land in lieu of rates. The land in suit is Organisation land. In my view the words in s. 26 (1) of the Act “in such manner and subject to such exceptions” govern the word “principles” preceding them, and should be read in their ordinary and natural meaning. Read thus, I am satisfied that the Minister would be entitled to modify the principles or bases of valuation as set out in s. 8 of the Act. The provisions of r. 7 do just that. The rule, in my opinion, is intra vires. I concur in the order of the President.

**Musoke J:** I agree with the judgment and order of the President.

*Appeal dismissed*.

For the appellant:

*PJ Wilkinson, QC* and *PM Mulira* (Assistant Counsel)

For the respondent:

*PA Clarke*