



**Gathungu & another v Ministry of Lands and Physical Planning & another (Commercial Case E817 of 2021) [2024] KEHC 13487 (KLR) (Commercial and Tax) (31 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 13487 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
COMMERCIAL CASE E817 OF 2021  
AA VISRAM, J  
OCTOBER 31, 2024**

**BETWEEN**

**ISAAC WANJOHI GATHUNGU ..... 1<sup>ST</sup> PLAINTIFF**

**ISABELLA NYAGUTHII WANJOHI ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**MINISTRY OF LANDS AND PHYSICAL PLANNING ..... 1<sup>ST</sup> DEFENDANT**

**NATIONAL LAND COMMISSION ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. I have considered the Notice of Motion application dated 4<sup>th</sup> October, 2022, the grounds of opposition, the submissions of the parties, and the applicable law.
2. It is not in dispute that this matter emanates from a claim relating to the compulsory acquisition of land reference No. 28/1 which was acquired in 2009 to pave way for the construction of the Thika Superhighway.
3. The Plaintiffs filed the present suit on 10<sup>th</sup> September, 2021, seeking judgment against the Applicants/ Defendants for full settlement of an award arising from compulsory acquisition of Kshs. 14,625,330/= plus costs and interest.
4. Paragraph 9 of the Plaint specifically states that the claim is for the sum claimed pursuant to the land acquisition.
5. Based on the record, interlocutory judgment was entered against the Defendants for the sum of Kshs. 14,625,330/= on 27<sup>th</sup> January, 2022. The Defendants submit that it had not been served with the



application seeking leave to enter the interlocutory judgment, nor were they accorded an opportunity to respond to the said Application.

6. In view of the foregoing that the 1<sup>st</sup> Defendant/Applicant filed the present Notice of Motion Application seeking the following: -

- i. That this Honourable court do set aside the Interlocutory Judgment entered on 27<sup>th</sup> January, 2022 against the 1<sup>st</sup> and 2<sup>nd</sup> Defendants /Applicants and all consequential orders and proceedings thereto and issue an order to commence the suit de novo in the Environment and Land Court.
- ii. That this Honourable Court lacks Jurisdiction to issue any orders relating to compulsory acquisition of land since that jurisdiction has been vested solely on the Environment and Land Court under section 13 of the [Environment and Land Court Act](#).

7. The applicable law is found at Section 13 of the [Environment and Land Court Act](#) (“the Act”).

The same clearly vests jurisdiction to handle any matters relating to land including compulsory acquisition of Land with the Environment and Land Court (“ELC”). Section 13 of the Act specifically states:-

- “(2) In exercise of its jurisdiction under Article 162(2) (b) of [the Constitution](#), the Court shall have power to hear and determine disputes—
- (a) relating to environmental planning and protection, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources;
  - (b) relating to compulsory acquisition of land;” (emphasis mine)

8. In Supreme Court of Kenya Civil application No 11 of 2016- ‘Hon (Lady ) Justice Kalpana H Rawal Versus Judicial Service Commission and others in demystifying jurisdiction quoted from the decision in Supreme Court of Nigeria supreme case No 11 of 2012- ‘Ocheja Immanuel Dangama – Versus - Hon Atoi Aidoko Aliaswan and 4 others where the court stated:-

“It is settled that jurisdiction is the life blood of any adjudication because a Court or tribunal without jurisdiction is like an animal without blood, which means it is dead. A decision by a Court or tribunal without requisite jurisdiction is a nullity dead on arrival and of no legal effect whatever that is why an issue of jurisdiction is granted and fundamental in adjudication and has to be dealt with first and foremost.”(Emphasis mine).

9. Based on a plain reading of the Plaintiff, it is evident to me the subject matter falls within the mandate of the ELC, and not the present court. I am of the view that the matter ought not to have been filed in the present court from the outset, and accordingly, each and every step taken in the High Court, without jurisdiction, was void and of no legal effect.

10. In Abraham Mwangi Wamigwi V Simon Mbiriri Wanjiku & Another[2012]eKLR, in relation to the consequences of filing of suit in a court without jurisdiction, the court stated that:-

“The reason for this is that a suit filed in a court without jurisdiction is a nullity in law and whatever is a nullity in law is in the eyes of the law nothing and therefore the court cannot purport to transfer nothing and mould it into something through a procedure known as



“transfer”. In other words, courts can only transfer a cause whose existence is recognised by law.”(emphasis mine)

11. The decision in the above matter, not only re affirms the position, that a suit must be filed in the appropriate court from the outset, but also rules out the possibility of transfer from this court to the ELC in circumstances such as the present one.
12. It is evident that our constitutional make-up and structure intended to create specialized courts pursuant to Article 162 of *the Constitution*. *The Constitution* intended for those courts to have a very specific and exclusive jurisdiction over certain areas of law. Those areas of law are outlined in *the Constitution*, and in the ELC Act. In my view, issues affecting or concerning compulsory acquisition of land fall squarely within the said areas of law pursuant to section 13 of the Act as stated above.
13. In the present matter, the Plaintiff states that the Plaintiffs are claiming a payment arising out of an award emanating from the compulsory acquisition of Land Reference No. 28/1, which they claim to be their land. An additional issue was raised by the Applicant, which was not denied by the Respondent, namely, that the reason for non-payment by the Government to the Respondent is because the ownership of the subject land is presently in dispute. Given the above, I am persuaded that the suit concerns not only, questions concerning the compulsory acquisition of land, but likely raises further questions concerning the ownership of subject land. I therefore do not think the pre-dominant issue before the court is merely payment of a debt as alleged by the Respondent.
14. Finally, as regards the issue of whether or not leave is required before the Attorney General may come on record, in the present matter there is no dispute that the 1<sup>st</sup> Defendant is one of the Ministries created under the executive arm of the government. Additionally, the 2<sup>nd</sup> Defendant is a Commission established under Article 67(1) of *the Constitution* of Kenya to manage land on behalf of national and county governments. In light of the above, given that the Attorney General is the principal legal advisor to the Government and holds a mandate and duty to represent the Government, I am persuaded that it did not require leave to come on record to represent the said entities in the present matter.
15. It is trite that this court may not arrogate to itself jurisdiction through craft or legal interpretation, and I do not intend to do so. I find and hold that this court has no jurisdiction to entertain the present suit. It follows logically that the order entering interlocutory judgement against the Defendants was also made without jurisdiction, and is of no legal effect.
16. The upshot is that the application is with merit. The Plaintiffs suit is incompetently before this court and the same is struck out with costs.

**DATED AND DELIVERED VIRTUALLY VIA MICROSOFT TEAMS THIS 31<sup>ST</sup> DAY OF OCTOBER 2024**

**ALEEM VISRAM, FCI Arb**

**JUDGE**

**In the presence of;**

.....For the 1<sup>st</sup> Plaintiff

.....For the 2<sup>nd</sup> Plaintiff

.....For the 1<sup>st</sup> Defendant

.....For the 2<sup>nd</sup> Defendant

