



**Autobacs Limited v Board of Trustees Kenya Railway Staff
Retirement Benefits Scheme & 3 others (Environment & Land Case
E148 of 2020) [2025] KEELC 2862 (KLR) (20 March 2025) (Judgment)**

Neutral citation: [2025] KEELC 2862 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E148 OF 2020**

**AA OMOLLO, J
MARCH 20, 2025**

BETWEEN

AUTOBACS LIMITED PLAINTIFF

AND

**BOARD OF TRUSTEES KENYA RAILWAY STAFF RETIREMENT BENEFITS
SCHEME 1ST DEFENDANT**

KENYA RAILWAY CORPORATION 2ND DEFENDANT

NAIROBI METROPOLITAN SERVICE 3RD DEFENDANT

NATIONAL LAND COMMISSION 4TH DEFENDANT

JUDGMENT

1. The Plaintiff filed a plaint dated 22nd September, 2020 seeking for the following orders;
 - a. A permanent injunction restraining the Defendants from trespassing on, removing or evicting the Plaintiffs from the Demised Premises or interfering with the Plaintiffs right to peaceful and quiet enjoyment of the Demised Premises unless and until the Plaintiffs are compensated for the loss of their lease interests.
 - b. Specific damages as particularized in paragraph 23 of the Plaint.
 - c. Compensation for breach of the Plaintiffs' right to property and fair administrative action as provided under Articles 40 and 47 of *the Constitution*.
 - d. Aggravated and exemplary damages for trespass.
 - e. Interests on (2) and (3) above at commercial rates from the date of filing of the suit until payment in full.



- f. Costs of this suit and interests thereon from the date of judgement until payment in full.
 - g. Any such orders or reliefs that this Honourable Court may deem just and fit to grant.
2. The Plaintiff averred that at all materials times, the 1st Defendant was the registered owner of the property known as L.R No.209/11953 containing by measurement seven decimal two nine two (7.292 Ha) hectares registered in the Land Registry, Nairobi as Grant Number I.R 72448 and more particularly on land survey Plan Number 205374 hereinafter referred to as “the suit property.”
 3. The Plaintiff entered into a lease agreement for the suit property with the 1st Defendant effective from February 2020, for a period of nine (9) years allowing the Plaintiff to carry out business operations on the premises. However, through a letter dated September 11, 2020, by the 1st Defendant, the Plaintiff was informed that the land was subject to compulsory acquisition for the construction of the Nairobi Expressway Project, a process initiated by the government.
 4. Despite the notices indicating that the Plaintiff’s lease might be affected, the 1st Defendant later ordered the Plaintiff to vacate the premises on September 15, 2020, citing an urgent government directive. The Plaintiff claims that this forced eviction violated their right to property, disrupted their lease agreement, and deprived them of their legal rights under the Land Act.
 5. The Plaintiff aver that the compulsory acquisition process was improperly handled, as they were not given adequate notice or the opportunity to be heard as required by the Land Act. They implead the 1st Defendant of breaching the lease agreement by allowing the Plaintiff’s property to be destroyed and failing to provide the required 90-day notice to terminate the lease.
 6. The Plaintiff also highlights that the eviction was executed without due process, including failing to provide the mandatory seven-day notice for entering the property, resulting in trespass and illegal actions by the Defendants.
 7. The Plaintiff seeks compensation for damages caused by the eviction, including refunds for rent and deposits, compensation for the loss of business, destruction of property, and other related costs particularized as follows;
 - i. Refund of deposit paid Kshs.334,230
 - ii. Refund of rent paid for September Kshs.111,410
 - iii. Improvements on demised premises Kshs.26,461,250
 - iv. Loss of user/future profits from business @ Kshs.10,800,000 per year from September 2020 to 16th December 2028(remaining term of 9 years)
 - v. Damages for relocation Kshs.100,000
 - vi. Damages for goodwill Kshs.5,000,000
 8. They aver that the Defendants’ actions amounted to arbitrary deprivation of property, breaching constitutional rights under Article 40, which protects property right, thus entitled to compensation due to the illegal termination of the lease and forced eviction from the premises.

Statement of Defence.

9. The 1st Defendant and 4th Defendant filed statements of defence dated 19th January 2021 and 17th July 2023 respectively. They denied the Plaintiff’s averments with the 1st Defendant stating that the Government enjoys the unfettered right of eminent domain and compulsory acquisition in accordance



with provision of Article 40 (3) of the Constitution and part VIII of the Land Act, 2012 and that the said acquisition was properly exercised.

10. That the 1st Defendant does not have the authority to deny the Government its unfettered right to compulsory acquisition for the good of the general public, including the Plaintiff. The 1st Defendant contended that the 4th Defendant conducted an inquiry process pursuant to Section 112 of the Land Act to hear issues relating to the propriety of the acquisition and claims for compensation.
11. The 4th Defendant confirmed that the Plaintiff duly attended the inquiry and presented their claims of compensation and upon conclusion of the inquiry, the awards were prepared taking into consideration the provisions of Part VIII of the Land Act and the provisions of the Land (Assessment of Just Compensation) Rules, 2017 which the Plaintiff duly accepted by appending their signatures and the funds were disbursed.
12. The 1st Defendant stated that the Government has the overriding right of eminent domain which takes precedence over the Plaintiffs rights as a lessee and that there is a clear laid out procedure of challenging Compulsory acquisition which the Plaintiff ignored thus this Court lacks jurisdiction to handle this suit.
13. The 4th Defendant explained that the Kenya National Highways Authority which is the acquiring authority sought to undertake the construction of the Nairobi Expressway Road Project hence instructed it to compulsorily acquire various properties along the said corridor as per the provisions of Article 40 of the Constitution and Chapter VIII of the Land Act.
14. That the 4th Defendant caused to be published a Notice of Intention to acquire the affected properties inter alia in the Kenya Gazette Notice 2161 Vol CXXII No. 48 of 12th March, 2020. It stated that the acquiring body vide Gazette Notice 6601 Vol CXII No. 163 of 4th September, 2020 sought to delete, correct and add parcels of land required for the construction of the Nairobi Expressway Road Project and the suit property to wit; L.R No. 209/11953 was among those properties added for compulsory acquisition for purposes of the said Nairobi Expressway Road project.
15. Therefore, in strict Compliance with the provisions of Chapter VIII of the Land Act and Article 40 of the Constitution, the 4th Defendant caused to be published a Notice of Inquiry to acquire the above property inter alia in the Kenya Gazette Notice 6602 Vol CXXII No. 163 of 4th September, 2020 notifying all the affected property owners or persons with interest in parcels of land identified in the Notice to attend an inquiry and present their claims of compensation.
16. That in the the intervening period the acquiring authority and the 4th Defendant undertook ground inspections of the suit property inter alia to determine the amount of compensation payable as per their respective mandate. The valuation provided the correct compensation assessed by competent valuation officers who undertook field inspections and collected supporting data as per standards valuation procedure guided by among others, international valuation standards and the dictates of the schedule to the Land acquisition Act Cap 295 (repealed) which was applicable prior to the formulation and publication of the Land (assessment of just compensation) Rules of 2017.
17. The suit against the 2nd Defendant was struck out as per ruling dated 20th December 2022 while the 3rd defendant no longer exist as its place was taken by the Nairobi City County Government who was not joined to these proceedings.
18. Parties agreed to prosecute the suit by relying on the pleadings and documents filed. The Plaintiff filed an undated witness statement by Mary Esther Njeri, its director while 1st Defendant filed witness statement dated 2nd July 2021 by Isaac Sila, described as the Chief Executive Officer of the 1st Defendant.



19. The Plaintiff also filed a list and bundle of documents dated 22nd September 2019 which included; Plaintiff's certificate of incorporation, lease agreement dated 1st February 2020, letters dated 11th September 2020 and 15th September 2020, payment receipt for rent, business permit from Nairobi City County, financial statements for the period ending December 2018 and December 2019 and photographs of the destroyed property.
20. The 4th Defendant on the other hand filed list of documents dated 27th September 2023 to wit; Gazette Notices No. 6601 and 6602 dated 4th September, 2020 and statement of award issued and Acceptance by Autobacs Limited.
21. The Plaintiff said it used the leased portion for its motor vehicle business without issue until September 2020, when it was informed by the 1st Defendant that the property was subject to compulsory acquisition for the Nairobi Expressway Project. Despite the fact that the Plaintiff's lease was not specifically affected by the acquisition, the 1st Defendant later ordered the Plaintiff to vacate the premises on short notice, citing the reason of compulsory acquisition, which the Plaintiff argue is a violation of its rights under the lease and *the Constitution*.
22. The Plaintiff contends that the 1st Defendant breached the lease agreement by failing to provide the required 90-day notice before termination, allowing third parties to destroy the Plaintiff's property, and disrupting their right to peaceful enjoyment of the premises.
23. Additionally, the Plaintiff claims that the 1st Defendant failed to address concerns about the refund of advance rent after the destruction of the leased property and it seeks compensation for these breaches and damages caused by the Defendants' actions, including the illegal eviction and forced removal from the premises. That these actions resulted in arbitrary deprivation of their property rights under Article 40 of *the Constitution*.
24. On its part, the 1st Defendant admitted that it is the registered owner of the suit property and the National Government, aiming to improve the road network and ease traffic congestion in Nairobi, identified the need to acquire land for the construction of the Nairobi Expressway Road Project. Consequently, Kenya National Highways Authority (KeNHA) submitted a request for land acquisition to the National Land Commission (NLC), which, after reviewing the request, published a Notice of Intention to acquire the necessary land parcels, including the suit property.
25. The 1st Defendant stated that the acquisition process, governed by the *Land Act*, 2012, was intended for public purposes and served the public interest, with the government utilizing its power of eminent domain under Article 40(3) of *the Constitution*. That the Plaintiff, was at all material times involved in the ongoing land acquisition process and received notices regarding an inquiry into compensation and the potential impact on their lease agreement.
26. In the witness statement of Danson Njenga for the 4th Defendant, said that the 4th Defendant caused to be published a notice of intention to acquire affected properties in the gazette notice of 12th March, 2020. The said notice was varied with another notice issued on 4th September 2020 being notice no. 6601 Vol CXII No 163 and the variation now included the suit property among those to be acquired.
27. He stated that the acquiring authority, the Ministry of Lands and the 4th Defendant took joint inspection report of the suit property to determine the amount of compensation payable. That the property was valued according to the valuation standards and the dictates of the Land Acquisition Act.
28. The 4th Defendant reiterated that the Plaintiff attended the said inquiry and presented their claim for compensation. Upon conclusion of the inquiry, the award for the Plaintiff of Kshs 25,041,948 was



prepared and it accepted the terms of the award by appending his signature. Subsequently, the funds were released to the Plaintiff.

Analysis and Determination:

29. In this suit, the Plaintiff sought orders of a permanent injunction against the Defendants in relation to the suit property, compensation for the alleged breach of their right to property, and damages suffered as a result of the acquisition of the said property by the Kenya National Highways Authority (KENHA) through the 4th Defendant.
30. The Plaintiff contends that their lease agreement over the property was impacted by the acquisition, thus infringing upon their right to the land. In defence, the 1st Defendant, as the registered owner of the land asserted that the National Government, exercising its right of eminent domain, is empowered to acquire land for public purposes. The 1st Defendant averred further that the due process required under the *Land Act*, 2012, was followed in the acquisition of the suit property, and that compensation was appropriately processed in accordance with the law.
31. It is against this background and upon reviewing the pleadings and the documents presented in support of and against the claim, the question this court is called to answer is
 - a. Whether or not the orders of permanent injunction can issue where land has been compulsorily acquired.
 - b. Whether the Plaintiff is entitled to specific damages claimed.
 - c. Whether or not the Plaintiff is entitled to compensation for breach of violation of right to property and fair administrative action
 - d. Who pays for the costs of the suit.
32. At paragraph 19 of the plaint, the Plaintiff stated that the Defendants proceeded to demolish its structures and forcefully ejected it from the impugned premises. The suit has challenged their eviction from the suit property stating that it was executed without due process, including failing to provide the mandatory seven-day notice for entering the property. Thus, the Plaintiff is acknowledging that they were removed hence the order of permanent injunction can only issue if this court finds that their eviction and or removal was not within the law.
33. The process of compulsory acquisition is governed by *the Constitution* and part VIII of the *Land Act*. Article 40(3) of *the Constitution* provides;
 - (3) The State shall not deprive a person of property of any description, or of any interest in, or right over, property of any description, unless the deprivation—
 - a.
 - b. is for a public purpose or in the public interest and is carried out in accordance with this Constitution and any Act of Parliament that—
34. There is no doubt that the land was being acquired for public purpose which is the construction of the Nairobi Expressway. Secondly, the Defendants have presented evidence that the Plaintiff was compensated through payment of an award of Kshs 25,041,948 and the details of payment provided. This far, I am not persuaded by any violation of article 40(3) of *the Constitution*.



35. In the case of Patrick Musimba v National Land Commission & 4 others [2016] eKLR the court held as follows;

“Under Section 107 of the *Land Act*, the National Land Commission (the 1st Respondent herein) is ordinarily prompted by the national or county government through the Cabinet Secretary or County Executive member respectively. The land must be acquired for a public purpose or in public interest as dictated by Article 40(3) of *the Constitution*. In our view, the threshold must be met: the reason for the acquisition must not be remote or fanciful. The National Land Commission needs to be satisfied in these respects and this it can do by undertaking the necessary diligent inquiries including interviewing the body intending to acquire the property.

Under Sections 107 and 110 of the *Land Act*, the National Land Commission must then publish in the gazette a notice of the intention to acquire the land. The notice is also to be delivered to the Registrar as well as every person who appears to have an interest in the land.

As part of the National Land Commission’s due diligence strategy, the National Land Commission must also ensure that the land to be acquired is authenticated by the survey department for the rather obvious reason that the owner be identified. In the course of such inquiries, the National Land Commission is also to inspect the land and do all things as may be necessary to ascertain whether the land is suitable for the intended purpose: see Section 108 of the *Land Act*.

The foregoing process constitutes the preliminary or pre-inquiry stage of the acquisition.

The burden at this stage is then cast upon the National Land Commission and as can be apparent from a methodical reading of Sections 107 through 110 of the *Land Act*, the landowner’s role is limited to that of a distant bystander with substantial interest.

Section 112 of the *Land Act* then involves the landowner directly for purposes of determining proprietary interest and compensation. The section has an elaborate procedure with the National Land Commission enjoined to gazette an intended inquiry and the service of the notice of inquiry on every person attached. The inquiry hearing determines the persons interested and who are to be compensated. The National Land Commission exercises quasi-judicial powers at this stage.

On completion of the inquiry the National Land Commission makes a separate award of compensation for every person determined to be interested in the land and then offers compensation. The compensation may take either of the two forms prescribed. It could be a monetary award. It could also be land in lieu of the monetary award, if land of equivalent value, is available. Once the award is accepted, it must be promptly paid by the National Land Commission. Where it is not accepted then the payment is to be made into a special compensation account held by the National Land Commission: see Sections 113- 119 of the *Land Act*.

The process is completed by the possession of the land in question being taken by the National Land Commission once payment is made even though the possession may actually be taken before all the procedures are followed through and no compensation has been made. The property is then deemed to have vested in the National or County Government as the case may be with both the proprietor and the land registrar being duly notified: see Sections 120-122 of the *Land Act*.



If land is so acquired the just compensation is to be paid promptly in full to persons whose interests in land have been determined: See Section 111 of the Land Act. This is in line with the Constitutional requirement under Article 40(3) of the Constitution that no person shall be deprived of his property of any description unless the acquisition is for a public purpose and subjected to prompt payment in full of just compensation.

The Constitution dictates that acquisition be in accordance with the provisions of the Constitution itself and any Act of Parliament. The Constitution itself only provides for just compensation being made promptly.

The current procedure for acquisition of land by the State is as outlined above. As can be seen parliament took very seriously its constitutional duty to legislate on the State's powers of deprivation or expropriation. Perhaps conscious of the emotive nature of land issues, the Legislature appeared scrupulous and contemplative.”

36. The 1st and 4th Defendants have stated that due process of compulsory land acquisition was followed and that the 4th Defendant conducted an inquiry in which the Plaintiff was involved in. From the evidence adduced by the Plaintiff, it was not an owner of the suit land but was on it by way of a lease agreement and so their interest that was being compensated was for the loss of being dislodged from the premises where it was carrying on business. The Plaintiff acknowledged receipt of the letter dated 11th September 2020 from the 1st Defendant informing him of the planned compulsory acquisition but the said acquisition may affect the lease. The Plaintiff seems to have an issue with the letter of 15th September 2020 which gave the Authority on whose behalf the land was being acquired to enter the land. That the Plaintiff was given only 8 hours to vacate.
37. As evidence of the compensation paid to the Plaintiff, the 4th Defendant relied on the Award dated 22nd January 2021 to Autobacs Ltd for Kshs.25,041,948/= which the Plaintiff through Mary Esther Njeri of ID 11XXXX acknowledged acceptance on 11/2/2021 and provided electronic funds transfer details with name of the Payee being Autobacs Limited.
38. Further, the said Mary Esther Njeri is listed as the only director/shareholder of the Plaintiff.
39. It is therefore my considered opinion that the due process having been followed, the acquisition was properly handled.
40. With regard to whether the Plaintiff's eviction was regular. It is not in contest that the Plaintiff and the 1st Defendant had entered into a renewable nine years lease agreement with regard to the suit property with effect from 1st February 2020 at a consideration of Kshs.111, 410 as monthly rent and had set up structures for the purposes of carrying out its business of selling motor vehicles.
41. That also, it is not contested that on 11th September 2020 the Plaintiff received a letter from the 1st Defendant informing him of the planned compulsory acquisition but the said acquisition may affect his lease.
42. The 1st Defendant further vide letter dated 15th September 2020 informed the Plaintiff that KeNHA had been given a presidential order to enter the suit property on the said date for commencement of their project giving them 8 hours' notice to vacate.
43. The 1st Defendant pleaded that the government was exercising its power under the doctrine of eminent domain and which is discernible from the pleadings. Therefore, the claim for breach of the lease cannot arise as the said contract was frustrated. It is one of the reasons in my view the Plaintiff was being compensated as it fell within the category of persons described under article 40(4) of the Constitution



which states thus; “Provision may be made for compensation to be paid to occupants in good faith of land acquired under clause (3) who may not hold title to the land.”

44. If it is true that the entry was done September 2020 before the assessment of the award dated 22nd January, 2021, then the Plaintiff ought to have included the claims on violations and losses now pleaded under paragraph 24 of the plaint during the inquiry and probably they did as the award is dated after the suit was filed. The notice of award stated what the compensation paid for to include value of the improvements and disturbance allowance. It was signed by Mary Ester Njeri on 11.2.2021 which was post the date of filing of this suit on 20th September, 2020. There was no amendment to the plaint done to discount the amount of compensation paid to the Plaintiff through the bank details provided in the documents filed by the 4th Respondent
45. This court does not have legal standing to assess compensation payable pursuant to compulsory land acquisition. The plaint as filed was not lodge as an appeal against the award to the Plaintiff as compensation for its interest in the suit land L.R no 209/11953. Rather, it is asking this court to make a finding on compensation because of violations its rights pursuant to the compulsory acquisition which in my view was already provided for. In the circumstances, this court finds no merit in the suit and I proceed to dismiss it.
46. Each party to meet their costs of the suit.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 20TH DAY OF MARCH, 2025

A. OMOLLO

JUDGE

