



REPUBLIC OF KENYA



**KENYA LAW**  
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**Bollo v National Land Commission & 2 others (Environment & Land Petition  
E005 of 2021) [2023] KEELC 21652 (KLR) (20 November 2023) (Ruling)**

Neutral citation: [2023] KEELC 21652 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO  
ENVIRONMENT & LAND PETITION E005 OF 2021  
MN GICHERU, J  
NOVEMBER 20, 2023**

**BETWEEN**

**PHILIP ODHIAMBO BOLLO ..... PETITIONER**

**AND**

**NATIONAL LAND COMMISSION ..... 1<sup>ST</sup> RESPONDENT**

**KENYA RAILWAYS CORPORATION ..... 2<sup>ND</sup> RESPONDENT**

**CHINA ROAD AND BRIDGE CORPORATION ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

1. This ruling is on the notice of preliminary objection dated 8/6/2021. The said objection reads as follows.

“Take notice that the 3<sup>rd</sup> respondent opposes the petition dated 24/3/2021 based on the following grounds.

1. The dispute does not raise any constitutional issues for adjudication by the Environment and Land Court sitting as a Constitutional court because ,
  - a. The claim for special damages of Kshs 2, 421, 000/- for alleged costs of repairs and rent is purely civil for determination by the court exercising its jurisdiction under ordinary statutes.
  - b. The Environment and Land Court does not have the original jurisdiction to hear and determine the claim for alleged violation of the right of safe, clean and healthy environment because Section 32 of the *Environmental management and*



co-ordination act vests such jurisdiction on the complaints committee established under Section 31 of the Act.

- c. The petition does not plead with reasonable precision the constitutional provisions alleged to have been violated and the manner in which they were violated.
2. It is settled law that where there exists an alternative remedy of filing a suit in the ordinary civil courts or another tribunal prescribed by the Constitution or parliament, a party ought not to invoke the jurisdiction of the constitutional court by substituting/baptizing ordinary claims such as constitutional issues.

Reasons whereof the 3<sup>rd</sup> respondent prays that the petition dated 24/3/2021 be struck out with costs.

2. In response to the preliminary the petitioner has this to say.

Firstly, the petitioner is seeking redress because his right to a clean and healthy environment has been infringed upon.

Secondly, he is entitled to just compensation for his damaged property.

Thirdly, this is the court with jurisdiction to offer redress as per Article 162(2) (b) of the Constitution.

Fourthly, the issues raised in the petition are Constitutional issues as the petitioner was forced to vacate his house due to the dangers caused by the 3<sup>rd</sup> defendant's explosives.

3. Counsel for the parties filed written submissions dated 22/2/2022 and 1/12/2022.

4. I have carefully considered the preliminary objection in its entirety including the grounds, response by the petitioner, the submissions by learned counsel for the parties and the law cited therein. I allow the preliminary objection for the following reasons.

5. Firstly, the main prayer in the petition is compensation of Kshs 2, 421, 000/- being the value of the damage caused to the petitioner's house by explosives during the construction of the standard gauge railway. Such claim is within the jurisdiction of the Magistrates court since that court can award up to Kshs 20 million.

6. Secondly, under Section 11 of the Civil Procedure Act it is provided that every suit shall be instituted in the court of the lowest grade competent to try it. The Section reads as follows.

“Every suit shall be instituted in the court of the lowest grade competent to try it...”

7. Thirdly, I find that the petition does not merit hearing by this court sitting as a Constitutional Court. Damage to property as a result of explosives used in quarrying activities or constructing the Standard Gauge Railway (SGR) are not constitutional issues. The remedies sought by the petitioner are available at the Magistrates Court and the petitioner has not set out with a reasonable degree of precision the nature of the alleged violation other than the damage that he has quantified of Kshs 2.4 million which is within the purview of the Magistrate's court.

For the above stated reasons, I strike out the entire petition and direct that the claim for compensation be filed in the subordinate court, subject of course to the law of limitation. No order as to costs.

**DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 20<sup>TH</sup> DAY OF NOVEMBER, 2023.**

**M.N. GICHERU**



**JUDGE**

