



**Uniliver Tea Kenya Limited v National Land Commission (Environment & Land
Petition 11 of 2017) [2023] KEELC 22405 (KLR) (7 December 2023) (Judgment)**

Neutral citation: [2023] KEELC 22405 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KERICHO

ENVIRONMENT & LAND PETITION 11 OF 2017

MC OUNDO, J

DECEMBER 7, 2023

**IN THE MATTER OF ARTICLE 162 (2) (B) OF THE CONSTITUTION OF
KENYA 2010**

AND

**IN THE MATTER OF THE ALLEGED AND/OR THRETNED
CONTRAVENTION OF FUNDAMENTAL RIGHTS AND FREEDOMS UNDER
ARTICLES 40, 47, 48, AND 50(1) OF THE CONSTITUTION OF KENYA
2010**

AND

**IN THE MATTER OF ENVIRONMENT AND LAND COURT ACT NO. 19 OF
2011**

AND

IN THE MATTER OF PART VIII OF THE LAND ACT, NO. 19 OF 2011

BETWEEN

BETWEEN

UNILIVER TEA KENYA LIMITED PETITIONER

AND

NATIONAL LAND COMMISSION RESPONDENT

JUDGMENT

1. Vide a Petition dated the 12th October 2017 and Amended on the 12th April, 2022, the Petitioner herein sought from court the following orders;



- i. A declaration be issued that the Petitioner is the legal owner of all that parcel of land known as L.R No. 5467/3 and is entitled to due process before any purported compulsory acquisition.
 - ii. A declaration be issued that the purported acquisition of Property L.R No. 5467/3 and the process leading thereto contravened the Petitioner's rights under Article 40 as read with Article 47 and 50 (1) of *the Constitution*.
 - iii. An order of certiorari quashing the purported Award dated 14th December, 2016 in relation to the property L.R No. 5467/3.
 - iv. An order of Certiorari quashing the purported Award dated 14th September, 2017 in relation to the property L.R No. 5467/3.
 - v. An order compelling the Respondent to issue a proper and valid Notice of inquiry and to thereafter conduct a fresh inquiry as to compensation in relation to the Property L.R No. 5467/3 in accordance with the law.
 - vi. That alternatively to prayer (v) above, the court to award outstanding compensation in the sum of Khs. 25,630,000/=plus Kshs. 473,807/= incurred as survey and valuation costs.
 - vii. Costs of the Petition.
 - viii. Any other or further orders that this court shall deem fit.
2. The Amended Petition was supported by an Affidavit sworn by Winnie Ochieng, the Petitioner's Legal Officer on the 12th April 2022, who reiterated the contents of the Petition to the effect that the Petitioner was the registered proprietor of all that parcel of land known as Land Reference No. 5467/3 situate in Kericho County measuring approximately 5,037 acres (the Petitioner's property) and which land was being utilized for growing tea bushes and indigenous trees.
 3. That by a Gazette Notice No. 1821 published on 18th March, 2016, the Respondent indicated its intention to acquire several parcels of land within Kericho County on behalf of the Kenya Highway Authority (KeNHA) for the purpose of carrying out a proposed rehabilitation of the Mau Summit-Kericho-Nyamasaria-Kisumu Bypass (the Bypass). That the Gazette Notice listed, among others, the Petitioner's Property, out of which 0.9125 hectares (approximately 2.32 acres) was proposed for acquisition, but did not mention the name of the registered owner of the property. Further that the said Gazette Notice was described as an addendum to Gazette Notices No. 8753 and 8754 of 23rd July, 2010 which notices did not include the Petitioner's property.
 4. That the aforementioned Gazette Notice also indicated among other things that the inquiry for hearing of claims for compensation (the inquiry) by persons interested in the parcels of land that were proposed for acquisition would be held on various dates as indicated in the said Gazette Notice. Consequently, the inquiry for hearing of claims for compensation in respect of the Petitioner's Property was scheduled for 24th May, 2016 at 9:30am at the County Commissioners office at Kericho. That the Petitioner was not aware of the said inquiry until the afternoon of 24th May, 2016 when officers of KeNHA visited the Petitioner's premises and gave them a copy of the Gazette Notice inviting the Petitioner and other land owners for the inquiry which had already taken place hence the Petitioner was not afforded an opportunity to participate in the inquiry.
 5. That upon being served by the said Gazette Notice, the Petitioner, through its Lawyer Messrs Njoroge Regeru & Co. Advocates wrote a letter dated 26th May, 2016 to KeNHA and Solei Boneh International Holding (SBI), the contractor engaged by KeNHA for construction of the bypass, raising its concerns regarding the process and requesting for time and opportunity to make representations before closure



- of the process of inquiry. They did not get a written response despite sending a follow-up letter dated 16th September, 2016 but upon raising the matter with the Respondent's officials, they had been assured that their concerns had been noted and that the Respondent would reopen the process of Inquiry so as to accord them an opportunity to participate.
6. She further deponed that on 23rd December, 2016, the Respondent published a fresh Gazette Notice number 10642 expressing its intention to acquire additional land which included the Petitioner's Property. That the said notice of Intention to Acquire three parcels of land expressly stipulated that a further notice of inquiry would be published in the Kenya Gazette.
 7. That on 19th July, 2017, KeNHA officers accompanied by employees of SBI trespassed into the Petitioner's Property without any notice and commenced preparations for the road construction project before the pending inquiry was arranged in contravention of the provisions of Section 120 of the Land Act, 2012. That upon raising its grievance with KeNHA, the said KeNHA officers presented a purported Award from the Respondent ostensibly offering to compensate the Petitioner Kshs. 48,200,000/= in return for 1.6945 hectares (approximately 4.94 acres) of the Property compulsorily acquired. That the said award was improper as it did not specify the value of the land, the improvements made and the disturbance allowance assessed. Further that the purported award dated 14th December, 2016 was being issued to the Petitioner, for the very first time, over 7 months later.
 8. That subsequently, the Petitioner had been served with a Gazette Notice No. 7488 dated 18th August, 2017 giving Notice of an Inquiry of claims relating to the Petitioner's property which was to be held on 5th September, 2017 at the Respondent's offices. That the Petitioners appeared before the Respondent on the said date and presented its written claim together with a Valuation Report dated 3rd August, 2017 after which the Respondent, by a document dated 14th September, 2017 purported to issue an Award of Kshs. 48,200,000/= for the Petitioner's property acquired.
 9. That by a Notice of Taking Possession dated 4th October, 2017, the Respondent purported to issue a fifteen (15) days' notice to the Petitioner of its intention to take possession of the Petitioner's Property. That the said notice was premature as just compensation had not been made to the Petitioner until the 22nd February, 2018 when the Respondent paid the Petitioner the sum of Kshs. 48,200,000/= only in respect of the 4.04 acres acquired which was in violation of the due process stipulated by the law.
 10. That even if the Respondent and KeNHA had an intention of acquiring the Petitioner's Property for public purposes, they were enjoined to comply with the provisions of the Constitution and the Land Act. Consequently, by purporting to invade the Petitioner's Property without adhering to the applicable process, the Respondent, KeNHA and SBI contravened the Petitioner's Constitutional right to protection of the Property enshrined under the Constitution hence their action amounted to unlawful deprivation of property.
 11. That subsequently, KeNHA had irregularly taken possession of the Petitioner's Property and deployed SBI to commence road construction causing the Petitioner to sustain loss and damages as it had been deprived of its property by the resultant and occupation of the said property in pursuance of its commercial interest.
 12. That the value of the compulsorily acquired portion of the property was Kshs. 73,830,000/= which included the value of 4.04 acres of land, Tea crop, Cypress trees and Disturbance Allowance. The Petitioner acknowledged that it received Kshs. 48, 200,000/= on 28th February, 2018 from the Respondent as compensation for the acquisition of its property but deponed that the said award was a violation of its rights under Article 40 of the Constitution as the same did not reflect the true value of property. That in the circumstances, Kshs. 25,630,000/= was still outstanding from the Respondent in



- respect of the portion of the Petitioner's Property that was compulsorily acquired and the Petitioner's claimed the same.
13. She further deponed that the Petitioner incurred costs of survey and valuation for purposes of preparing for the inquiries aforementioned in the sum of Kshs. 473, 807/=.
 14. In response the Petition, the Respondent via its Replying Affidavit sworn by Brian Ikol the Respondent's director of legal affairs, on 30th January 2023, he had deponed that the Respondent was the body duly vested with the mandate to compulsorily acquire land required for public purpose on behalf of the National or County government upon a request for acquisition of public land by any institution. That on or about the year 2016, KeNHA requested for acquisition of properties for proposed rehabilitation of the Mau summit-Kericho-Nyamasaria-Kisumu Bypass, where the suit land had been included.
 15. That in compliance with the provisions of the [Land Act](#) 2012, a notice under Section 162 (2) of [Land Act](#) 2012 dated 18th March 2016 had been issued to all the affected parties inviting them for public hearings on various dates. That as per the said notice, the inquiries were scheduled for public hearing on 24th May, 2016 which was over 2 months' notice but on the material day, the Petitioner's representatives did not attend on the allegation that they were never served with the notice on time.
 16. That in order to remedy the inadvertent mistake, the Respondent published a fresh Gazette Notice on the 23rd December, 2016 expressing the intention to acquire additional land for the project where the Petitioner's property was included therein. Further, that on the 18th August, 2017, a notice of inquiries had been published inviting the interested parties for hearing on the 5th September, 2017 where the Petitioner had attended and presented a written claim and valuation report claiming Kshs. 78,000,000/- for consideration by the Respondent.
 17. That upon retreating to prepare an Award for Compensation, the Respondent considered the written claim by the Petitioner and arrived at a value of Kshs. 48,200,000/- which they considered to be just in the circumstances. That the allegation that the Petitioner's claim was not considered was bare as the same was not supported by any evidence. That resultantly, the Petitioner had been duly served with the award where the Respondent had requested for bank particulars and the other documents for purposes of processing the payment. Upon the Petitioner submitting the aforementioned documents, the payment of Kshs. 48,000,000/- was processed into the Petitioner's bank account.
 18. That owing to the urgency of the project, a notice of taking possession was issued on the 6th October 2017 requiring the Petitioner to give vacant possession in line with early entry under the [Land Act](#).
 19. He thus deponed that the Respondent followed due process in acquiring the suit property and it was therefore untrue to allege that the Petitioner was unlawfully deprived of their right to property without compensation. That the Respondent was a stranger to the allegations of trespass and unlawful entry on the Petitioner's land and that its role was limited to compulsory acquisition on behalf of the acquiring body. That Section 128 of the [Land Act](#), 2012 and Section 13 of the [Environment and Land Court Act](#) provided that where a person was dissatisfied with the project, such affected person should prefer an appeal to the court. The Petitioner had failed to do so.
 20. That the Petitioner having received the amount awarded, it should be estopped from making prayers to quash the Gazette Notices and the award thereto. Further that the prayer to be declared the legal owner of the entire suit property was misconceived as the Petitioner had already received compensation for the 4.04 acres of the portion of the suit property.



21. That the valuation report attached to the Petition was not based on Government valuation standards which was contrary to the spirit of prudent use of public resources under Article 201 of the Constitution hence the amount claimed by the Petitioner was unjustified. That the instant Petition lacked merit and ought to be dismissed with costs.
22. On the 24th November 2022, directions were taken to dispose of the Petition by way of written submissions, parties complied and I shall summarize their respective submissions as herein under.

Petitioner's submissions

23. The Petitioner summed up the brief facts of its Petition as herein above stated before it framed its issues for determination as follows:
 - i. Whether or not the compulsory acquisition process with respect to the Petitioner's property was inconsistent with the Constitution and any written law.
 - ii. Whether the award of compensation was valid.
 - iii. Whether the Petitioner is entitled to any remedy.
24. On the first issue for determination, as to whether the Compulsory acquisition with respect to the Petitioner's property was inconsistent with the Constitution and any written law, the Petitioner relied on the decision in the case of Attorney General vs. Halal Meat Products Limited [2016] eKLR which cited with approval lord Denning MR's decision in Priest vs. Secretary of State [1982] 81 LGR 193,198 and Patrick Musimba vs. National Land Commission & 4 others [2016] eKLR to submit that it had the right not to be deprived of its land by the state or any public authority against its wishes and that an acquiring authority ought to ensure full compliance with the Constitutional and statutory obligations regarding the process.
25. The Petitioner reiterated that in the Gazette Notice No. 1821 published on 18th March, 2016, the Respondent had indicated its intention to acquire several parcels of land for the construction of a Bypass. That even though the said Gazette Notice listed the Petitioner's Property as one of the parcels of land to be acquired, the same did not mention the name of the registered owner of the said property. Further that the said Gazette Notice was described as an addendum to Gazette Notices No. 8753 and 8754 but the later Notice did not include the Petitioner's property. That the Respondent's failure to include the name of the registered owner in the aforementioned Gazette Notice and to effect service upon the Petitioner, as required under Section 107(4) of the Land Act, 2012 showed lack of due diligence on its part. That since the Respondent had conducted the requisite due diligence, they should have found out that the Petitioner was the registered proprietor of the suit property and effect service of the notice upon them.
26. The Petitioner also relied on the provisions of Section 107(5) and Section 112 of the Land Act, 2012 to submit that as a result of the Respondent's failure to serve them with the said Gazette Notice and a Notice of at least 15 days, they had denied the Petitioner a chance to prepare and present its written notice of claim and also to participate in the inquiry. That the resultant proceedings therefore were in violation of the Petitioner's right to fair administration and fair hearing as enshrined under Articles 47 and 50 (1) of the Constitution as well as Section 112 (1) () of the Land Act.
27. The Petitioner also placed reliance on a combination of decided cases in Attorney General vs. Zinj Limited (Petition 1 of 2020) [2021] KESC 23 (KLR) (Civ) (3 December 2021) (Judgment), Patrick Musimba's case (supra), Mombasa West Limited vs. National Land Commission & 2 others [2022]



eKLR and Fort Properties Ltd vs. Attorney General & 2 others [2021] eKLR where the court had highlighted the importance of service of Notice upon the proprietor of land.

28. With regards to taking possession of the Petitioner's property, the Petitioner submitted that contrary to the statutory process that required the acquiring entity to issue a notice of award and offer compensation before taking possession of a compulsorily acquired property, the KeNHA officers accompanied by the employees of SBI gained unlawful entry into the Petitioner's property without any notice and prior to any award being made by the Respondent hence the said entry was illegal, null and void as it contravened clear statutory processes. That the Notice of Taking Possession dated 4th October, 2017 served upon the Petitioner on 6th October 2017 was invalid, defective, null and void for violating the provisions of Section 120(1) of the Land Act, 2012 since the said notice was not issued pursuant to a valid award and also that the Petitioner had not communicated its acceptance of the same. That the notice was also premature since just compensation had not been made to the Petitioner at the time of the said notice as it had been until the 22nd February, 2018 that the Respondent paid the Petitioner a sum of Kshs. 48,200,000/- with respect to the 4.04 acres acquired. Reliance was placed on the Patrick Musimba's case (supra).
29. On the second issue for determination as to whether the award of compensation was valid, the Petitioner relied on the Attorney General vs. Zinj Limited case (supra) to submit that the most critical aspect of any compulsory acquisition process was the requirement for it to be followed by prompt payment in full, of just compensation to the affected persons as required under Article 40(3) of the Constitution. That accordingly, the Respondent was under an obligation to first conduct an inquiry as to the compensation over the suit property and then cause a notice to be published in the Gazette at least 15 days to the inquiry and the same be served upon the Petitioner to deliver a written claim of compensation. That failure to serve the Petitioner with the said notice was a violation of natural justice as provided for under Articles 47 and 50 of the Constitution.
30. On the award dated 14th December 2016, the Petitioner submitted that the Respondent had not controverted the fact that it did not accord the Petitioner a chance to participate in the preparation of the purported award hence violated the Constitutional and statutory protections afforded to the Petitioner. That the purported award given to the Petitioner by KeNHA officers dated 14th December, 2016 was therefore illegal, null and void as the same was made arbitrarily and without the participation of the Petitioner. That the said award did not also specify the value of the Land, the improvements made and nor did it indicate the disturbance allowance assessed, including damage to the Petitioner's tea bushes and trees and the diminution in profits as provided for under Section 107A of the Land Act, 2012.
31. That from the award dated 14th September, 2017, it was not clear how much the Respondent valued the suit property, the total value of improvements and the total compensation payable inclusive of 15% disturbance allowance, including damages and diminution of profits as a result of the destruction of tea bushes and trees which were revenue generating for the Petitioner. That the Respondent gave a blanket figure of Kshs. 48,200,000/- without providing a breakdown. That it was safe to conclude that the Respondent did not conduct a valuation of the suit property neither did it consider the valuation report submitted by the Petitioner, instead the Respondent proceeded from a pre-determined decision and relied on the award of the 14th December, 2106 which had been given a similar amount.
32. The Petitioner further submitted that the procedure by which the said award was reached at and the nature of the award itself violated the Petitioner's rights under Articles 40, 47, and 50 of the Constitution as well as the Petitioner's rights to natural justice. That the purported award failed to provide reasons for the award and the criteria with which the Respondent arrived at the said award in contravention



- of the Petitioner's right as enshrined under Article 47 of *the Constitution* and Section 4(2) and 5(1)(d) and (i) of the Fair Administrative Actions Act. That resultantly, the Respondent arrived at an award which grossly undervalued the Petitioner's property, failed to meet the set criteria of a fair and just compensation and which was defective and invalid.
33. The Petitioner thus urged the court to be guided by the valuation report prepared by the Highlands Valuers Limited as the same was prepared in line with the prescribed guidelines in determining valuations for purposes of compulsory acquisition. The Petitioner also relied on the decided case in Nancy Muthoni Wairagu vs. National Land Commission & Another [2022] eKLR, Sceneries Limited vs National Land Commission (2017) eKLR, Gami Properties Limited vs. National Land Commission [2017] eKLR and Ravaspaul Kyalo Mutisya v. National Land Commission [2022] eKLR.
34. On the third issue for determination, the Petitioner's submission was that the Respondent's actions were manifestly un-procedural, unlawful and unreasonable hence the same formed part of a deliberately orchestrated scheme to deprive the Petitioner of due process and a chance to pursue just compensation for the property envisaged under the *Land Act*, 2012. That having received written assurances from the Respondent that it would take the necessary steps in accordance with the law, the Petitioner acquired legitimate expectation that its proprietary rights would not be interfered with without just compensation and in the absence of due process and sufficient opportunity for participation as required by law. That in view of the un-procedural manner in which the Respondent compulsorily acquired the suit property, the Respondent contravened the Petitioner's rights as enshrined in *the Constitution*. That further, the Respondent failed in properly advising KeNHA as to the legality of its actions and aided the said KeNHA in circumventing the mandatory requirements of the law, thereby aiding and abetting infringement of the Petitioner's rights.
35. That as a result of the aforementioned actions, the Petitioner sustained loss and damages as it had been unlawfully deprived of the property and its resultant rights to use and occupy the suit property in pursuance of its commercial interests. That subsequently, the Petitioner was entitled to all the remedies sought in the Petition.
36. In conclusion, the Petitioner urged the court to find that it had adduced sufficient evidence to discharge its legal burden of proof hence the court ought to allow the entire Amended Petition with costs.

Respondent's Submissions.

37. The Respondent framed its issues for determination as follows;
- i. Whether the Respondent violated the Petitioner's right to property under Article 40 of *the Constitution*.
 - ii. Whether the Respondent conducted the process of compulsory acquisition for the suit property in accordance with the law.
 - iii. Whether the orders sought by the Petitioner should be granted.
38. On the first issue for determination, the Respondent relied on the provisions of Article 40 of *the Constitution* and the decided case in Veronicah Waithira Trustee of Inter-Christian Churches & 3 others vs. Kenya National Highways Authority [2014] eKLR to submit that *the Constitution* reserves the state right to eminent domain and as such, the Petitioner herein seeking to cancel the compulsory acquisition would amount to the Petitioner curtailing the state's power to eminent domain against *the Constitution*. That consequently, the court should not entertain the Petition herein as the same would



- run afoul the spirit of *the Constitution* by stopping the Respondent from exercising their mandate to compulsorily acquire property for public purpose.
39. On the second issue for determination as to whether the Respondent conducted the process of compulsory acquisition of the suit property in accordance with the law, the Respondent's submissions were hinged on the provisions of Section 107 and 112 of the *Land Act*, 2012 to the effect that they had duly adhered to the process of compulsory acquisition. That they had given out the requisite notices of intention to acquire the parcels vide Gazette Notices dated 18th March, 2016 and 18th August 2017 to correct an inadvertent mistake wherein the Petitioner had attended the second inquiry.
40. That at the inquiry meetings, it was the practice that all the interested persons were given an opportunity to present their grievances in the form of claims where the Petitioner had attended the inquiry and submitted their claim of Kshs. 78,000,000/- for consideration to which the Respondent had considered. That the Petitioner was thus estopped from claiming that their right to fair hearing was infringed whereas as they had been given an opportunity to be heard and to present their claim.
41. The Respondent further placed reliance on the Patrick Musimba case (supra), Provisions of Section 113 and 114 of repealed Land Acquisition Act and the decided case in Stanley Munga Githunguri vs. National Land Commission [2016] eKLR to submit that the valuation process was undertaken with due regard to the provisions of law. That the Petitioner herein was offered an award of Kshs. 48,000,000/- which they accepted and the amount was remitted to them promptly. That the Respondent was only under a statutory obligation to prepare an award of compensation which reflected the commission's opinion which was then served on the interested party. That nothing more was expected of the Respondent other than furnishing an interested party with the award of compensation.
42. On the third issue for determination as to whether the orders sought by the Petitioner should be granted, the Respondent submitted that the right of eminent domain by the state should not be interfered with by the court. Reliance was placed on the decided cases in Diana Kethi Kilonzo & Another vs. Independent Electoral & Boundaries Commission & 10 Others [2013] eKLR, Anarita Karimi Njeru vs. Republic [1979] eKLR and Mumo Matemu vs. Trusted Society of Human Rights Alliance & 5 Others [2013] eKLR to submit that orders sought by the Petitioner would be interfering with the statutory mandate of the Respondent. That the Petitioner should not be granted any of the orders sought against the Respondent that was it had compulsorily acquired the suit property as the Petitioner had accepted the award wherein the compensation sum had been paid in full. Further that the *Land Act*, 2012 provided that one had an option to either accept the award or reject it and thereafter appeal against it. That there was therefore no leeway for acceptance and appeal at the same time hence the Petitioner's actions were an indication of a desire to acquire more funds than what they were entitled to which was contrary to the provisions of Article 201 of *the Constitution*.
43. That it was trite law that to enforce their fundamental rights and freedoms, the Petitioner ought to have stated with clarity the rights infringed, the facts relied upon and the manner in which *the Constitution* had been violated to it had failed to do so. That it was apparent that the Petitioner did not prove violation of *the Constitution* or any law as against the Respondent. That the entire suit lacked merit and did not warrant issuance of any of the orders sought hence the same ought to be dismissed with costs.

Determination.

44. I have considered the contents of the Petitioner's Amended Petition, the annexures thereto as well as the Respondent's response, the parties' submissions, the law and the authorities herein cited. Indeed the Petitioner brings this Petition alleging violation of its right to own property in terms of Article 40



of *the Constitution*, the right to fair administrative action under Article 47 of *the Constitution* and the right to a fair hearing under Article 50 of *the Constitution*.

45. The Petition, stems from the assertion by the Petitioner that being the registered proprietor of parcel of land Reference No. 5467/3 situate in Kericho County which measured approximately 5,037 acres, which land it had been utilizing to grow tea bushes and indigenous trees, by Gazette Notice No. 1821 published on 18th March, 2016, the Respondent had indicated its intention to acquire several parcels of land within Kericho County on behalf of the Kenya Highway Authority (KeNHA) for the purpose of carrying out the proposed rehabilitation of the Mau Summit-Kericho-Nyamasaria-Kisumu Bypass (the Bypass). That the Gazette Notice, which had been described as an addendum to Gazette Notices No. 8753 and 8754 of 23rd July, 2010 had listed, among others, the Petitioner's 0.9125 hectares (approximately 2.32 acres) for acquisition, but had not mentioned the name of the registered owner of the property.
46. That the said Gazette Notices had also indicated among other things that the inquiry for hearing of claims for compensation (the inquiry) by persons interested in the parcels of land, that were proposed for acquisition, would be held on various dates. Consequently, the inquiry for hearing of claims for compensation in respect of the Petitioner's Property had been scheduled for 24th May, 2016 at 9:30 am at the County Commissioners office at Kericho but the Petitioner was not aware of the said inquiry until the afternoon of 24th May 2016 when officers of KeNHA visited their premises and gave them a copy of the Gazette Notice inviting them and other land owners for the inquiry which had long past. The Petitioner's assertion was therefore that they had not been afforded an opportunity to participate in the inquiry.
47. That consequently after the Petitioner had raised the matter with the Respondent's officials, the Respondent had published a fresh Gazette Notice No. 10642 on 23rd December, 2016, expressing its intention to acquire additional land which included the Petitioner's Property. That the said notice of Intention to Acquire three parcels of land expressly stipulated a further notice of inquiry would be published in Kenya Gazette.
48. However, on 19th July, 2017, KeNHA officers accompanied by employees of SBI trespassed into the Petitioner's Property without any notice and commenced preparations for the road construction project pending the Inquiry. That upon the Petitioner raising its grievance with KeNHA, the said KeNHA officers presented a purported Award from the Respondent ostensibly offering to compensate the Petitioner Kshs. 48,200,000/= in return for 1.6945 hectares (approximately 4.04 acres) of the property they had compulsorily acquired. The Petitioner's contention was that the said award dated 14th December 2016, which had been issued 7 months later, was improper as it did not specify the value of the land, the improvements made and the disturbance allowance assessed.
49. That subsequently, the Petitioner had been served with a Gazette Notice No. 7488 dated 18th August, 2017 giving Notice of an Inquiry on claims relating to its property which was to be held on 5th September 2017. That the Petitioner had appeared before the Respondent on the said date and presented its written claim together with a Valuation Report dated 3rd August, 2017 after which the Respondent by a document dated 14th September, 2017 had issued an Award of Kshs. 48,200,000/= for the property acquired.
50. The Petitioner's complaint was that at by a Notice of Taking Possession dated 4th October 2017, the Respondent had issued a fifteen (15) days' notice of its intention to take possession of the Petitioner's Property before a just compensation had been made. That it had been on the 22nd February, 2018 that the Respondent had paid the Petitioner the sum of Kshs. 48,200,000/= in respect of the 4.04 acres it had acquired.



51. Subsequently, KeNHA had irregularly taken possession of the Petitioner's Property and deployed SBI to commence road construction causing the Petitioner to sustain loss and damages as it had been deprived of its property upon the resultant acquisition and occupation of the said property in pursuance of its commercial interest.
52. The Petitioner acknowledged receipt of Kshs. 48,200,000/= on 28th February, 2018 from the Respondent as compensation for the acquisition of its property but contended that the value of the compulsorily acquired portions of the property was Kshs. 73,830,000/= which included the value of 4.04 acres of land, Tea crop, Cypress trees and Disturbance Allowance. That there was therefore an outstanding balance of Kshs. 25,630,000/= in addition to survey and valuation costs of Kshs. 473,807/=.
53. The Respondent's contention on the other hand was that pursuant to the request by KeNHA for acquisition of properties for proposed rehabilitation of the Mau summit-Kericho-Nyamasaria-Kisumu Bypass, on or about the year 2016, in compliance with the provisions of the Land Act 2012, a Notice under Section 162 (2) of Land Act 2012 dated 18th March 2016 had been issued to all the affected parties inviting them for public hearings on various dates.
54. That as per the said notice, the inquiries were scheduled for public hearing on 24th May, 2016 which was over 2 months' notice, but on the material day, the Petitioner's representatives did not attend on the allegation that they had not been served with the notice on time.
55. That in order to remedy the inadvertent mistake, the Respondent had published a fresh Gazette Notice on the 23rd December, 2016 expressing the intention to acquire additional land for the project where the Petitioner's property was included therein. On the 18th August, 2017, a notice of inquiries had been published inviting the interested parties for hearing on the 5th September 2017. The Petitioner had attended and presented a written claim and valuation report claiming Kshs. 78,000,000/- for consideration by the Respondent which report had been considered wherein a value of Kshs. 48,200,000/- had been arrived at as a just compensation in the circumstances.
56. That the allegation that the Petitioner's claim was not considered was therefore bare as the same was not supported by any evidence. That resultantly, the Petitioner had been duly served with the award wherein it had supplied the Respondent with its bank particulars and the other documents for purposes of processing the payment and Kshs. 48,000,000/- which had been processed into the Petitioner's bank account. That owing to the urgency of the project, a notice of taking possession was issued on the 6th October 2017 requiring the Petitioner to give vacant possession in line with an early entry under the Land Act.
57. The Respondent's position was that they had followed due process in acquiring the suit property. That the Petitioner had not been unlawfully deprived of their right to property without compensation. That its role was limited to compulsory acquisition on behalf of the acquiring body. That as per the provisions of Section 128 of the Land Act, 2012 and Section 13 of the Environment and Land Court Act, where a person was dissatisfied with the process, such affected person ought to prefer an appeal to the court. The Petitioner had failed to do so.
58. That the Petitioner having received the amount awarded as compensation for the 4.04 acres of the portion of the suit property, it was estopped from seeking for prayers to quash the Gazette Notices and the award thereto. That the valuation report attached to the Petition was not based on Government valuation standards which was contrary to the spirit of prudent use of public resources under Article 201 of the Constitution hence the amount claimed by the Petitioner was unjustified. The Respondent's contention was that the Petition lacked merit and ought to be dismissed with costs.



59. From the aforesaid narration, I find the issues for determination herein as being;
- i. Whether Petitioner's rights under *the Constitution* were violated by the Respondent.
 - ii. Whether the Petitioner is entitled to the reliefs sought in the Petition.
60. The sanctity of title to land is assured and protected under Sections 24, 25 and 26 of the *Land Registration Act*. Section 24(a) of the *Land Registration Act* stipulates as follows:
- ' subject to this Act, the registration of a person as a proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto....'
61. Section 25 (1) of the *Land Registration Act* further stipulates as follows:
- “The rights of a proprietor, whether acquired on first registration or subsequently for valuable consideration or by an order of court, shall not be liable to be defeated except as provided in this Act, and shall be held by the proprietor, together with all privileges and appurtenances belonging thereto, free from all other interests and claims whatsoever, but subject-”
62. Section 26(1) of the *Land Registration Act* further provides as follows:
- “the Certificate of Title issued by the Registrar upon registration, to a purchaser of land upon a transfer or transmission by the proprietor shall be taken by all counts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, and the title of the proprietor shall not be subject to challenge, except –
- a. On the ground of fraud or misrepresentation to which the person is proved to be a party
 - b. Where the Certificate of Title has been acquired illegally un-procedurally or through a corrupt scheme
63. It will be seen from the above, that title to land is protected, but the protection can be removed and title impeached, if it is procured through fraud or misrepresentation, to which the person is proved to be a party; or where it is procured illegally, un-procedurally, or through a corrupt scheme. There was no evidence adduced to the effect that the Petitioner had acquired title to land parcel L.R No. 5467/3 through fraud or misrepresentation or that the certificates of title had been acquired illegally, un-procedurally or through a corrupt scheme. The Petitioner had therefore satisfied the legal provision that it was the proprietor of the suit land and hence had absolute ownership including all rights and privileges appurtenant to it. It had thus disclosed a legal interest capable of protection under the law and therefore it ought not to be deprived of its land by the State or any public authority against its wish unless expressly authorized by law, and public interest which decisively demands so, and with compensation.
64. The Petitioner's grievance is that the Respondent had compulsorily acquired it portion of land measuring 4.04 acres for the proposed rehabilitation of the Mau Summit-Kericho-Nyamasaria-Kisumu Bypass (the Bypass) in violation of its rights under Article 40 of *the Constitution*. That further the said compulsory acquisition had been effected without adhering to the applicable process.



65. It is therefore quite clear that the Petitioner’s Petition is premised on compulsory acquisition of a portion of land measuring 4.04 acres comprised in the suit property registered as L.R No. 5467/3 in the Petitioners name, without following due process.
66. Article 67 of *the Constitution* establishes the National Land Commission with mandate over public land including land that has been compulsorily acquired. The *Land Act*, 2012 governs the process of Compulsory Land Acquisition in Kenya and mandates at Section 111(1) that the National Land Commission shall regulate the assessment of such just compensation and to prepare the award for compensation of such land that has been acquired.
67. The *Land Act*, at Section 133A established the Land Acquisition Tribunal wherein Section 133C of the said Act outlined the jurisdiction of the Tribunal as follows;
- “The Tribunal has jurisdiction to hear and determine appeals from the decision of, the Commission in matters relating to the process of compulsory acquisition of land.
- (2) A person dissatisfied with the decision of the Commission. may, within thirty days, apply to the Tribunal in the prescribed manner.
- (3) Within sixty days after the, filing of an application under this Part, the Tribunal shall hear and determine the application.”
68. Further, Section 133C (6) of the *Land Act* provides that:
- “Despite the provisions of, Sections 127, 128 and 148 (5), a matter relating to compulsory acquisition of land or creation of wayleaves, easements and public right of way, shall, in the first instance, be referred to, the Tribunal.”
69. It is to be noted that the Land Acquisition Tribunal is the first dispute resolution mechanism established under the law in case a dispute arises from compulsory acquisition of land. Section 133(7) of the *Land Act*, provides that the Tribunal has power to confirm, vary or quash the decision of the National Land Commission. Further Section 133D provides that if a party is dissatisfied with the Tribunal’s decision, they may appeal to the court on a question of law only.
70. However, at the time of filing the instant Petition, the Land Acquisition Tribunal had not yet been established and was only established via an amendment to the *Land Act*, 2012 by Land Value (Amendment) Act, 2019 in the year 2019 two years after the instant Petition had been filed, and became fully operational on 11th September, 2023. By this time, the instant Petition had already been canvassed and the same was just awaiting the delivery of judgment.
71. The right of access to court in case of a dispute relating to compulsory acquisition of land is a Constitutional right under Article 40(3) (ii) which allows any person who has an interest in, or right over, the property to be acquired a right of access to a court of law. Section 128 of the *Land Act*, 2012 provides that any dispute arising out of any matter provided for under this Act may be referred to the Land and Environment Court for determination. It is the Court’s view that the lack of an operational Land Acquisition Tribunal at the time of filing and canvassing of the instant Petition, did not limit the Petitioner’s right of access to the Court thus I find that the dispute as filed in Court is properly presented.
72. Article 40 of *the Constitution* which provides as follows:



- (1) Subject to Article 65, every person has the right, either individually or in association with others, to acquire and own property-
 - (a) of any description; and
 - (b) in any part of Kenya.
- (2) Parliament shall not enact a law that permits the State or any person-
 - (a) to arbitrarily deprive a person of property of any description or of any interest in, or right over, any property of any description; or
 - (b) to limit, or in any way restrict the enjoyment of any right under this Article on the basis of any of the grounds specified or contemplated in Article 27(4).
- (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) results from an acquisition of land or an interest in land or a conversion of an interest in land, or title to land, in accordance with Chapter Five; or
 - (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-
 - (i) requires prompt payment in full or just compensation to the person; and
 - (ii) allows any person who has an interest in, or right over, that property a right of access to a Court of law.
- (4) 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.
- (5) The State shall support, promote and protect the intellectual property rights of the people of Kenya.
- (6) The rights under this Article do not extend to any property that has been found to have been unlawfully acquired

73. Article 40(3) and (4) deal with the deprivation of property by the state on terms specified, that is, for a public purpose or in the public interest and upon payment of compensation and this is the provision of the law which triggered the Petitioner's Petition.

74. The Petitioner's claim was mainly based on the fact that a portion of its land parcel No. 5467/3 was allegedly acquired compulsorily by the Respondent who did not compensate it justly as contemplated by the law. That no notice was served upon it that its property was to be part of the land to be acquired by the Respondent for construction of the Mau Summit-Kericho-Nyamasaria-Kisumu Bypass. That the Respondent's agent, KeNHA and SBI took possession of its property before issuance of the said notice and payment of just compensation even though the same was a requirement of the law. That when the Petitioner made inquiries, it had found out that Gazette Notice No. 1821 of 18th March, 2016 had been issued where the Government had intended to acquire the listed parcel of land, for Kenya National Highway Authority (KeNHA) although the said list did not show the name of the registered owner as against the suit land.



75. The law governing compulsory acquisition is in Part VIII, Section 107 to 133 of the [Land Act](#) 2012. The process of compulsory acquisition was laid down in the decided case of Patrick Musimba vs. National Land Commission & 4 others [2016] eKLR where 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 Section s 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 Section s 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.”

76. From the foregoing, it is clear that the Preliminary Notice provided for under Section 107(5) of the [Land Act](#) is a mandatory requirement in the process of compulsory acquisition and the same must be served on every person who appears may be interested in the land and this would include the Petitioner herein as the registered proprietor of the suit property. The Court thus finds that the Respondent indeed issued a Gazette Notice dated 18th March 2016 to all the affected parties inviting them for public hearings on various dates. That as per the said notice, the inquiries to the Petitioner's property was scheduled for public hearing on 24th May, 2016 which was over 2 Months' notice and for which the Petitioner's representatives did not attend on the allegation that they were never served with the Notice on time.
77. That in order to remedy the inadvertent mistake, the Respondent published a fresh Gazette Notice on the 23rd December, 2016 expressing the intention to acquire additional land for the project and the Petitioner's property was included therein. On the 18th August, 2017, a Notice of Inquiries was published inviting the interested parties for hearing which had been scheduled for the 5th September, 2017. That indeed the Petitioner attended the inquiry and presented a written claim and valuation report for Kshs. 78,000,000/- for consideration by the Respondent, which report had been considered and a value of Kshs. 48,200,000/- had been arrived at which according to the Respondent, had been a just compensation in the circumstances. Up to this point, I find that the Respondent complied with the provisions of Section 107(5) and (5A) and 110(1) of the [Land Act](#), 2012. For this reason, the Petitioner is not entitled to prayer (ii) and (v) of the Amended Petition.
78. It has been argued that pursuant to issuance of a 15 day Notice of Taking Possession, of the Petitioner's land, dated 4th October 2017, and contrary to the statutory process that required the acquiring entity to issue a notice of award and offer compensation before taking possession of a compulsorily acquired property, the KeNHA officers accompanied by the employees of SBI gained unlawful entry into the Petitioner's property without any notice and prior to any award being made by the Respondent. That such entry was illegal, null and void as it contravened clear statutory processes as provided for by the provisions of Section 120(1) of the land.
79. However, the law under Section 120 (2) of the [Land Act](#), 2012 provides for situations where land could be acquired before the process of compensation is completed. Section 120 (2) of the [Land Act](#) provides as follows:

“In cases of where there is an urgent necessity for the acquisition of land, and it would be contrary to the public interest for the acquisition to be delayed by following the normal procedures of compulsory acquisition under this Act, the Commission may take



possession of the land upon the expiration of fifteen days from the date of publication of the notice of intention to acquire, and on the expiration of that time the Commission shall, notwithstanding that no award has been made, take possession of that land in the manner prescribed by subsection (1).”

80. The court in *African Gas and Oil Company Limited vs. Attorney General & 3 Others* [2016] eKLR asserted this position when it held that;

“First, it is correct that Section 120 (2) of the [Land Act](#) empowers the 3rd Respondent, in cases where there is an urgent necessity for the acquisition of land, and it would be contrary to the public interest for the acquisition to be delayed by following the normal procedures of compulsory acquisition under the [Land Act](#), to take possession of land upon the expiration of fifteen days from the date of publication of the notice of intention to acquire.”

81. Further in the case in *Nightshade Properties Ltd vs. National Land Commission & 3 others* [2021] eKLR, the court had held that;

“In my understanding, the fact that compensation had not been paid does not of itself invalidate the process of compulsory acquisition. Given the exigencies of the moment, the Government may actually take possession of property before all the procedures are followed through and where no compensation has been made and I did not therefore find any basis to hold that Section 120 of the [Land Act](#) was unconstitutional.”

82. In the foregoing it is therefore clear that since there was an urgent necessity for the acquisition of the land, that would be contrary to the public interest for the acquisition to be delayed by following the normal procedures of compulsory acquisition under this Act, the entry by the KeNHA officers accompanied by the employees of SBI could not be termed as illegal, null and void for having contravened the statutory processes because the law permitted the Respondent to take possession of property before payment of compensation in the circumstances herein above enumerated. Otherwise, Possession can only be taken upon the expiration of fifteen days from the date of publication of the notice of intention to acquire.

83. Indeed upon perusal of the Notice of Taking Possession dated 4th October, 2017, I find that the same had been issued pursuant to the provisions of Section 120 and 121 of the [Land Act](#), 2012 whereby the Respondent had given an explanation that the said Notice of Taking Possession had been issued owing to the urgency of the project. In the circumstances, I find that the Respondent was justified to take possession before the payment of just compensation.

84. As to whether the Petitioner was given an opportunity to be heard, Section 112 of the [Land Act](#) provides for issuance of notice at least thirty days after publishing the Notice of Intention to acquire land, giving a date for an inquiry to hear issues of propriety and claims for compensation by persons interested in the land. At the hearing, the Commission is expected to make full inquiry into and determine who are the persons interested in the land and thereafter receive written claims of compensation from those interested in the land. The Petitioner conceded that upon raising the matter with the Respondent’s officials, the Respondent assured them that their concerns had been noted and that the Respondent would reopen the process of Inquiry so as to accord the Petitioner an opportunity to participate. That subsequently, the Petitioner had been served with a Gazette Notice No. 7488 dated 18th August, 2017 giving Notice of an Inquiry of claims relating to its property which was to be held on 5th September, 2017 at the Respondent’s offices. The Petitioner had appeared before the Respondent on the said date and presented its written claim together with a Valuation Report dated 3rd August, 2017 after which the Respondent by a document dated 14th September 2017 had issued an



Award of Kshs. 48,200,000/= for the Petitioner's property acquired. It cannot therefore be said that the Petitioner had not been given an opportunity to be heard. This argument should therefore fail.

85. On whether an Award of Kshs. 48,200,000/= was a full and just compensation, as earlier on stated the inquiry as to compensation for land under compulsory acquisition is provided for under Section 112 of the *Land Act*. The same provides that a notice of at least thirty days after publishing the notice of intention to acquire land is issued giving a date for an inquiry to hear issues of propriety and claims for compensation by persons interested in the land. The Petitioner states that before it attended the Inquiry meeting of 5th September, 2017, it had engaged the services of a private valuer to determine the market value of the suit property together with the improvements thereon. That the valuation was found to be Ksh. 78,000,000/- and the said valuation report was presented at the inquiry together with claim forms. That by the Respondent compensating it with an Award of Kshs. 48,200,000/=, the Petitioners' contention was that its suit property had been undervalued.
86. Article 40(3) of *the Constitution* requires prompt payment in full, of just compensation to the person whose land has been compulsory acquired. The question for determination is whether the award made by the Respondent met the criteria for assessment thus making it a "just compensation".
87. Section 2 of the *Land Act* defines "just compensation" as follows;
- ".....in relation to compulsorily acquired land or creation of wayleaves, easements and public rights as a form of fair compensation that is assessed and determined through criteria set out under the Act."
88. Section 107A of the Land Value (Amendment) Act 2019 establishes the criteria for assessing the value for compulsorily acquired freehold land as follows;
- "Valuation of freehold land and community land for purposes of compensation under this Act shall be based on the provisions of this Part and the land value index developed for that purpose by the Cabinet Secretary in consultation with county governments and approved by the National Assembly and the Senate."
89. The said Section 107A of the Land Value (Amendment) Act 2019 establishes an elaborate and detailed criterion for assessing the compensation for compulsorily acquired property including the improvements made and increase in value of the land. Section 107A (7) and Section 3 of the Land (Assessment of Just Compensation) Rules, 2017 provides for the factors to be considered in computing and assessing compensation as follows:
- (a) The Market Value of the land.
 - (b) damage sustained or likely to be sustained by persons interested at the time of the Commission's taking possession of the land by reason of severing the land from other land;
 - (b) damage sustained or likely to be sustained by persons interested in the land at the time of the Commission's taking possession of the land injuriously affecting other property, whether movable or immovable or in any other manner affecting the person's actual earnings;
 - (c) if, in consequence of the acquisition, any of the persons interested in the land is or will be compelled to change residence or place of business, the payment of reasonable expenses to be determined by the Commission; (d) damage genuinely resulting from diminution of the profits of the land between the date of publication in the Gazette of the notice of intention to acquire the land and the date the Commission takes possession of the land; and



- (e) the effect of any express or implied condition of title or law which restricts the intended land use.”
90. The Petitioner challenges the criteria used by the Respondent in assessing compensation. It claimed that it was not clear how much the Respondent valued the suit property, the total value of improvements and the total compensation payable inclusive of 15% disturbance allowance, including damages and diminution of profits as a result of the destruction of tea bushes and trees which were revenue generating for the Petitioner. That the Respondent gave a blanket figure of Kshs. 48,200,000/- without providing a breakdown. That it had been safe to conclude that the Respondent did not conduct a valuation of the suit property and neither did it consider the valuation report submitted by the Petitioner, but had proceeded from a pre-determined decision and relied on the award of the 14th December, 2016 wherein they had given a similar amount.
91. Considering the elaborate criteria given under the Land Act and the Land (Assessment of Just Compensation) Rules, 2017, I find that it was imperative for the Respondent to give reasons and show the criteria used in arriving at the assessed award since the Award dated 14th September, 2017 only gave a blanket figure of Kshs. 48,200,000/= with no explanation, reason or criteria of how the said figure had been arrived at as is provided by the law.
92. Section 107(4) of the Land Act provides that prior to issuing the preliminary notice of intention to acquire land the Commission shall cause the affected land to be mapped out and valued. It can therefore be presumed that prior to making the award of compensation, the Respondent had carried out a valuation of the land and improvements thereon which valuation then formed the basis for the award. I say so because there had been no evidence placed before the court of the Petitioners seeking reasons from the Respondent for rejection of its claim for compensation of Kshs. 78,000,000/- as per the valuation report it gave. I have also not seen any evidence of the Petitioner seeking information and justification for the award of Kshs. 48,200,000/= from the Respondent. Apart from the allegation that its valuation was not considered by the Respondents and that the Respondent’s award was issued without conducting valuation of the suit property, there was no documentary evidence in support of the said allegations. Section 107-109 of the Evidence Act is explicit on the issue of the burden of proving a fact to the effect that the same lies on the person who wishes the court to believe in its existence.
93. I have also considered the statement signed by the Petitioner on 24th July, 2017 to the effect that it did not accept the award and it intended to appeal against it in court which statement had two options, either to accept the award and request that the same be deposited in the Petitioner’s bank account or reject the award and appeal against the same. The Petitioner chose the former option and acknowledged receipt of the award in its bank account on 22nd February, 2018. There was no evidence of the Petitioner’s communication to the Respondent not to pay the Award because it intended to appeal against the same in court, other than the fact that the said Petitioner signed against the option of rejecting the award and preferring the appeal in the statement.
94. It is my considered view that the Petitioner should have either accepted the payment of the award or rejected the same and appealed to the court as there was no option of accepting the award and appealing the same at the same time. This coupled with the fact that there was no documentary evidence presented before the court to demonstrate the efforts that the Petitioner had made in finding the reason for the rejection of its claim or the justification of the impugned award, by accepting the payment of the award, the Petitioner was estopped from appealing against the same. Prayer (iii), (iv) and (vi) of the Amended Petition therefore fails.



95. In the end, I find that the Petition lacks substantial evidence, is devoid of merit and is herein dismissed with no orders to costs.

**DATED AND DELIVERED VIA MICROSOFT TEAMS AT KERICHO THIS 7TH DAY OF
DECEMBER 2023**

M.C. OUNDO

ENVIRONMENT & LAND – JUDGE

