



REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI
MILIMANI LAW COURTS
CONSTITUTIONAL AND HUMAN RIGHTS DIVISION
PETITION NO 53 OF 2015

BETWEEN

ABDULLA AKIIO..... 1ST PETITIONER

JARED ARUWA..... 2ND PETITIONER

BIBIANA NZISA.....3RD PETITIONER

**(suing on behalf of themselves and on behalf of 374 traders
as members of the Tena Small Scale Traders Group)**

AND

KENYA URBAN ROADS AUTHORITY..... RESPONDENT

JUDGMENT

Introduction

1. This petition relates to a claim by the petitioners that their rights under Articles 40 and 47 of the Constitution have been violated by the respondent following the acquisition of their property for the expansion of the Outer Ring Road, Nairobi.

2. In their petition dated 12th February, 2015, the petitioners describe themselves as Committee members of Tena Small Scale Traders Group which comprises 374 traders. They have filed the petition against the Kenya Urban Roads Authority (KURA), a body corporate established under section 9 of the Kenya Roads Act, Cap 408 Laws of Kenya, whose mandate includes management, development, rehabilitation and maintenance of all public roads in cities and municipalities in Kenya.

3. The petitioners allege that the respondent has violated their constitutional right to property, among others, following the acquisition of the land on which the Tena Community Market is located. They assert that they are the lawful owners of the said property, challenge the constitutionality of the acquisition, and are unhappy that the respondent proposes to pay them compensation which they consider inadequate for their rights in the property.

The Petitioners' Pleadings

4. The petitioners' case is set out in the petition and the affidavit in support sworn on 12th February, 2015 by Jared Aruwa on their behalf. In the affidavit, the petitioners allege that they are allottees of all that property measuring approximately 1 acre comprising Tena Community Market at Tena estate, Nairobi. The market is made up of: Block A (71 stalls); Block B (118 stalls); Block C (89 stalls); Block D (34 stalls); Block E (25 stalls) and Block H (37 stalls), totalling 374 stalls.

5. They aver further that on 29th July, 2002, they applied to the defunct City Council of Nairobi to allocate them the suit property which was then an unoccupied open wasteland and a breeding ground for mosquitoes and reptiles which were a danger to the residents of the estate. They further state that they were driven by the desire to decongest the paths and walkways within the estate which had been converted into temporary stalls/kiosks and hence posed a security risk to the residents. On 28th January, 2002, the City Council granted the request for temporary occupation of the suit property as a market pending formalization of ownership.

6. Sometime in February, 2003, the petitioners organized themselves as traders of Tena Community market and occupied the said property. Each of them was allocated a plot measuring 10 feet by 10 feet for purposes of putting up temporary stalls for their businesses, pending the formalization of the allotments.

7. Mr. Aruwa deposes that while in temporary occupation, the petitioners remitted to the City Council of Nairobi Temporary Occupation License fees of Kshs 150, 000 per annum as was demanded by the Council. On 17th July, 2007, the Council, through its Social Services and Housing Committee, met, deliberated and approved the allocations of 320 stalls/plots and a power room to the petitioners, and it further approved the construction of additional stalls on the remaining space.

8. It is their case further that following the aforesaid approval, they immediately began construction of decent permanent stalls in place of the provisional ones previously constructed on temporary occupation/license, together with a toilet block of 9 doors which cost Kshs 1, 500, 000, 2 power rooms costing Kshs 510, 000 and a shared room.

9. It is their further contention that they planned and constructed the market in consultation with the Department of City Planning, and they have therefore acquired lawful possession or occupation. Further, it is their contention that between 28th September, 2007 and 1st October, 2007, the City Council, through its Social Services and Housing Department, confirmed the allotments of all the plots/stalls comprising the market to them. They also assert that before the allotment to them, it had been established and confirmed that the suit property existed and was available for allocation to them, and had not been put to other uses, public or otherwise.

10. Additionally, it is their case that as a precondition for their allotments and consequent occupation/construction, they were each required by the Council to pay a non-refundable deposit of Kshs2,600.00 within fourteen days from the date of confirmation of their allotments, annual rates, and a monthly maintenance fee of Kshs500.00. They contend that they duly complied with the above conditions and thus earned legal occupation of their stalls on the property and have been in occupation since 2007 to date.

11. The petitioners further depose that they have invested intensively in the property by putting up permanent stalls, offices, storage facilities, power rooms and garages in order to facilitate business at the market; that they paved parts of the property used as walkways, constructed storm water drainage systems, erected a fence around the property and planted trees along the fence. By doing so, they invested and spent heavily to make the property suitable and convenient for use, and each of them spent over Kshs 2,000,000.00.

12. The petitioners further aver that they engage in various retail and wholesale businesses at the market; that they employ over 1,000 Kenyans; that they serve the residents of Tena, Donholm, Greenfields, Inner

Core and Umoja estates, and they therefore derive their livelihoods from the market.

13. The petitioners aver that around September, 2013, the respondent informed them that they would be affected by the Outer Ring road project and they needed to relocate. They allege that the respondent took a census of all the traders at the market and details pertaining to their businesses including the value of their investments in the permanent stalls; that on 7th January, 2014, the respondent caused to be published in the *Nation* newspaper a notice to all the owners of the stalls and residents of Tena estate that the Kenya government, in conjunction with the African Development Bank, was in the process of implementing the Outer Ring road expansion project. The petitioners aver that they wrote to the respondent on 30th January, 2014 drawing its attention to the need to compensate and relocate them.

14. It is their deposition further that on 24th March, 2014, the respondent confirmed its decision to compulsorily acquire the market but that it would only pay them a disturbance allowance of Kshs 50, 000.00, despite their substantial investments in and lawful occupation of the suit property. They aver that the disturbance allowance that the respondent undertook to pay is not known in law, and is unreasonable and inadequate in the circumstances.

15. The petitioners alleged that the respondent had threatened to demolish their stalls, had not assessed the value of each of their investments and stocks in the stalls in order to inform their actions towards a lawful, just and reasonable compensation; and had not offered to provide them with an alternative place to relocate their businesses. It had therefore failed to comply with the law and procedures for compulsory acquisition, instead electing to arbitrarily deprive them of their properties and divest them of all their rights to and interest over such properties.

16. The petitioners therefore assert that their right to the goods and property in the stalls have been threatened with violation without lawful cause; that they will suffer grave injury, loss and damage, and their right to acquire and own property have already been violated. It is also their contention that their right to secure protection of the law and to fair administrative action will continue to be violated through the actions of the respondent.

17. The petitioners also filed a supplementary affidavit sworn on 25th February 2015 by the secretary of their group, Mr. Jared Aruwa in response to the averments by the respondent. In the said affidavit, the petitioners reiterate that they are the lawful owners of all the property or stalls comprising Tena Community market in Tena Estate, having acquired it legally from the authority then mandated to make such allocations, and that the respondent has no better title. Mr. Aruwa denies that they have ever instituted any proceedings before any court or tribunal for the enforcement of their rights over the subject properties other than the present petition.

18. He also maintains that the respondent cannot unjustly deprive them of their goods, investments, livelihoods in the subject properties and violate their rights in respect thereto. The petitioners ask the Court to allow the petition and grant the following orders:

- a. ***An order of declaration declaring that the petitioners and all members of Tena Small Scale Traders Group are legally entitled to all that property/stalls comprising Tena Community Market in Tena estate, Nairobi together with all appurtenant interests.***
- b. ***An order of declaration declaring that the decision of the respondent to forcefully acquire all that property/stalls comprising Tena Community Market and to demolish the petitioners' stalls and properties erected thereon without prompt, just and adequate compensation is unfair, unjust, unlawful and unconstitutional, hence null and void.***
- c. ***An order of declaration declaring that the respondent's decision and threats to arbitrarily deprive the petitioners of their properties/stalls comprising Tena Community Market in Tena estate, Nairobi through unlawful acquisition thereof will violate the petitioners' interests in, and rights over the said properties, and further infringe the petitioners' rights to fair administrative action.***

- d. ***An order of declaration declaring that the respondent's action in seeking to curtail, undermine and/or deprive the petitioners of their rights over, or interests in all that property/stalls comprising Tena Community Market in Tena estate, Nairobi without prompt, just and adequate compensation is unfair, unlawful and unconstitutional, hence null and void.***
- e. ***Judicial review order of Certiorari bringing before the Honourable Court for purposes of it being quashed, the decision of the respondent to arbitrarily deprive the petitioners of all that property/stalls comprising Tena Community Market in Tena estate, Nairobi, and rights over, or interests appurtenant thereto without following due process, and without prompt, just and adequate compensation.***
- f. ***Judicial review order of Prohibition prohibiting the respondent from unlawfully acquiring, demolishing or in any manner whatsoever interfering with the petitioners' stalls, structures, properties, and/or effects in or upon all that property/stalls comprising Tena Community market in Tena estate, Nairobi.***
- g. ***Judicial review order of Mandamus compelling the respondent to comply with the law on compulsory acquisition, and to promptly, justly and adequately compensate the petitioners for the deprivation of their properties, interests thereon and livelihoods.***
- h. ***In the alternative to prayer (g) above, the respondent be ordered to compensate the petitioners in sums equivalent in value for all the permanent stalls, structures, facilities erected by the petitioners and investments, and for loss of incomes, earnings and livelihoods derived by the petitioners and their members/families from of all that property/stalls comprising Tena Community Market in Tena estate, Nairobi.***
- i. **Costs.**

The Response

19. The respondent filed a replying affidavit sworn on its behalf by Mr. Peter Ogamba Bosire, its Chief Legal Officer in charge of litigation, on 18th February, 2015. They also relied on an affidavit sworn by Mr Josiah Mwangi Wanduraa, a chief Sociologist with the respondent, which had been filed in ELC No. 1484 of 2014, which is annexed to the affidavit of Mr. Bosire. The crux of the respondent's case is that the petitioners are abusing the process of the court in that they had filed a similar suit on the same matters against the respondent and two others in the Environment and Land Court, and it asks that the petition be dismissed with costs.

20. In his affidavit, Mr. Bosire deposes that the petitioners had filed ELC No 1484 of 2014 against the respondent and in respect of Tena Market. The bone of contention is the quantum of disturbance allowance awardable to the traders as they relocate to pave way for the implementation of the Outer Ring Road expansion project.

21. According to the respondent, the suit was filed as a civil action by way of plaint on 25th November, 2014. Shortly thereafter, the petitioners took out an urgent motion for conservatory orders on 1st December, 2014, which Motion was heard *inter partes* on 11th December, 2014. The respondent had, at the time of the hearing of the motion, filed its reply thereto, which comprehensively addressed all issues raised in the motion. Upon hearing the parties, the Court granted the plaintiffs a maximum of forty-five days' reprieve to enable them leave the market even as the court prepared to hear and determine the merits of the remaining issue on the quantum of disturbance allowance that should be awarded to the plaintiffs.

22. The plaintiffs then sought leave to respond to the respondent's reply, which they were granted, and the matter adjourned to the 2nd of February, 2015 for further directions. The plaintiffs had not filed a response by that date, and the 45 days given for them to vacate the land had expired and was not

extended. The matter was then adjourned to the 5th of March, 2015 for a further mention.

23. Mr. Bosire deposes that it therefore came as a rude shock to the respondent when it was served with the proceedings in this petition, and upon studying the pleadings, realised that they related to the same matters at issue in the ELC case. It had only been re-packaged, masked and or disguised as a constitutional petition. The only difference between the cases is that in the ELC case, the Nairobi City County and the Attorney General were the defendants, while the present matter has been lodged against the respondent only, and has been brought through a different firm of advocates.

Submissions by the Petitioners

24. The petitioners filed submissions dated 15th June, 2015 which were highlighted by their Learned Counsel, Mr. Midenga.

25. The petitioners submit that one acquires title and interest in land once a letter of allotment is issued and one meets the requirements in the letter. They relied for this proposition on the decisions in **Rukaya Ali Mohamed vs David Gikonyo Nambacha and Another, HCCA No. 9 of 2004; Wreck Motor Enterprise vs The Commissioner of Lands and 3 Others, Civil Appeal No. 71 of 1997** and **John Muchiri vs Rebecca Were Mutanda and Another [2015] eKLR**. It was their further contention that even if the relevant authority fails to issue title documents to a party, courts can enforce the right to the land as there is a difference between title to land and title documents, and one must properly acquire the interest and comply with the condition following from the interest before a title document is issued.

26. It was their submission further that having acquired the suit property regularly and lawfully, it can only be acquired by the National Land Commission on behalf of the respondent through compulsory acquisition. They argued further, on the authority of **Republic vs Kenya Urban Roads Authority and 2 Others ex parte Tamarind Village Ltd [2015] eKLR**, that the respondent lacks any mandate over the property.

27. The petitioners further submit that they were not heard before the decision to take their properties was made, and they have a legitimate expectation that once the properties were lawfully and procedurally allocated to them, they would not be taken and/or their ownership thereto revoked arbitrarily or forcibly. They submit that their right to fair administrative action with regard to the compulsory acquisition of their properties had been violated through the respondent's unlawful conduct, and unless the Court intervened, their rights to the suit property and all interests appurtenant thereto will be further violated

28. They termed the acquisition of their property unlawful, arbitrary and unconstitutional and as one that could not qualify as a constitutional limitation to the right to property by way of compulsory acquisition. They asked the Court to award them compensation to the value of their loss as quantified, as well as general damages for inconvenience and loss of business opportunities and profits as a result of the respondent's interference with their property.

29. While conceding that the petitioners had indeed filed a civil claim before the Environment and Land Court which they had, however, withdrawn, Learned Counsel, Mr. Midenga, submitted that the pendency of the said suit did not affect the present petition as the jurisdiction of this Court under Article 165 was different and clearly differed from that of the Environment and Land Court and this petition could have proceeded simultaneously with the ELC case.

Submissions in Response

30. The respondent filed submissions dated 14th July 2015 which were highlighted by its Learned Counsel, Mr. Mutinda. Its submission was that the issues complained of in this petition are alleged to have occurred in 2013 when the Land Act was already in force. The laws applicable to the issues are therefore the Constitution and the Land Act, 2012.

31. Under the law, rights or interests over land must be legally recognized rights and interests. From a

perusal of the petitioner's documents, it was evident, in the respondent's view, that Tena Community Market was established on land that was set aside as a road truncation and the land was therefore a road reserve.

32. It is also the respondent's submission that the petitioners' market operations were on a temporary basis, and their contention that the market was formalized and stalls allocated to them by the Nairobi City Council, and that they therefore acquired legal rights to or interests over the stalls comprising the suit property capable of protection by the law, are not correct.

33. According to the respondent, whatever was to be achieved with the formalization of the market is a matter within the realm of the defunct Nairobi City Council now succeeded by the Nairobi City County, which has not been enjoined in the present suit. It was its submission, however, that in any event, it is clear from the petitioners' documents that the formalization of the market did not change the status of their occupation on the subject plots from temporary occupation as they remained on Temporary Occupation Licence.

34. The respondent further took the position that a Temporary Occupation Licence is a permission to a licensee to occupy property but does not create an interest on the property itself that can be disposed of by the licensee, a position which was reaffirmed by the courts in **John Kariuki Maina vs Town Clerk of the Municipal Council of Thika [2015] eKLR** and **Mbari ya Kibugi Self Help Group vs Gatimu Women Group [2008] eKLR**. It was therefore its submission that the petitioners had no legally known right or interest over the land in dispute capable of protection by the law and which could be the subject of compulsory acquisition.

35. The respondent submitted further that as at April and September, 2013, it had asked the petitioners to relocate from the said market, and their continued stay on the land resulted in their being trespassers. In its view therefore, any structures on the land were illegal structures for which the process of compulsory acquisition does not apply. It was also its case that the property in the stalls belonged to the City Council of Nairobi rather than to the petitioners, and the Council had a tenancy agreement with them. The petitioners were therefore not entitled to compulsory acquisition of the stalls since they belong to the City County of Nairobi which, in its view, explained why the petitioners had elected not to join the City County in this petition in order to conceal material facts and confuse the Court with regard to the true status of the stalls.

36. With regard to the amount sought by the petitioners, the respondent took the view that they have failed to provide any evidence of the alleged expenditures in the sum of Kshs.2,000, 000. This was an exaggerated fiction, in its view, given that the available evidence indicates that the businesses at the market are not capable of spending Kshs.2,000, 000 as they are the same businesses which were in arrears ranging from Kshs.2,500 to Kshs 17, 000.

37. The respondents therefore termed the present petition an abuse of the court process and urged the Court to dismiss it and discourage such abuse of the judicial process by an award of costs against the petitioners.

Determination

38. I have read and considered the respective pleadings and submissions of the parties in this matter, and heard their Counsel in oral arguments. The gist of the petitioners' case is that there has been a violation of their constitutional rights under Article 40 and 47 of the Constitution by the respondent. They argue that the respondent has taken the property to which they have a proprietary interest without paying them adequate compensation.

39. The issues that arise for consideration are simple and straightforward: Was there a violation of the petitioners' rights under Article 40 and 47, or any other Article of the Constitution? If the response is in the positive, what are the remedies that the petitioners are entitled to?

Violation of Article 40 and 47 of the Constitution

40. Article 40 of the Constitution contains the constitutional protection of the right to property and 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, of 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.”***

41. The constitutional guarantee of the right to property is in accord with the requirements of international covenants to which Kenya is a party and, in accordance with Article 2(6) of the Constitution, form part of the laws of Kenya. In this regard, Article 17 of the Universal Declaration of Human Rights, 1948:

1. ***Everyone has the right to own property alone as well as in association with others.***
2. ***No one shall be arbitrarily deprived of his property.***

42. Article 47 of the Constitution guarantees to everyone the right to fair administrative action by providing as follows:

1. ***Every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.***
2. ***If a right or fundamental freedom of a person has been or is likely to be adversely affected by administrative action, the person has the right to be given written reasons for the action.***
3. ...

43. In determining the question whether there has been a violation of the petitioners’ rights under the two constitutional provisions set out above, I take into account a factual situation relied on by the respondent, and which has not been denied, in fact has been admitted, by the petitioners. This is that the petitioners, suing through a different set of the members of the Tena Small Scale Traders Group, had filed a civil suit

in the Environment and Land Court on 25th November, 2014 being ELC No. 1484 of 2014- Francis Mahugu and Others (Suing on behalf of themselves and 370 Landlords of the Tena Community Market) vs Kenya Urban Roads Authority and Others.

44. In that case, the issue before the Court was the alleged infringement of the plaintiffs' constitutional right to own property. The plaintiffs in that case were persons who described themselves as doing business at Tena Market. At paragraph 6 of their plaint, they alleged as follows:

“The plaintiffs together with 374 others paid for the allotment to the defunct City Council of Nairobi being allotment letters fees and lease for the properties subdivided into plots which were received by and receipted by the 2nd respondent (City Council of Nairobi) as required by the then City Council by laws.”

45. Paragraph 11 of their plaint set out their claim in the following words:

“The plaintiff avers that its constitutionally protected right to property has been infringed and that payment of the amount of Kshs.50, 000/= for each stall is not only deprivation of property but also abuse of the right to adequate compensation in case of compulsory acquisition.”

46. They then asked the Court to grant the following orders:

a) An injunction restraining the 1st defendant from unlawfully demolishing the stalls until adequate and commensurate compensation is paid to the plaintiff.

b) Costs be borne by the defendants.

47. The plaintiffs also filed an application by way of notice of motion before the ELC on 1st December, 2014 seeking interim conservatory orders. The application was heard *inter partes* on 11th December, 2014. The plaintiffs were as a result granted 45 days to enable them leave the market so that the construction of the road could proceed.

48. The Court also apparently gave directions with a view to adjudicating on the issue of the quantum of disturbance allowance payable to the plaintiffs. While the plaintiffs had been granted leave to file responses to the respondent's affidavit in that matter, they chose not to do so. Instead, they filed the present petition on 16th February, 2015, and they indicated at the hearing of this matter that they had withdrawn the ELC case.

49. I have considered the petitioners' averments and submissions with respect to their entitlement to the land, and their claim of violation of both Articles 40 and 47. I note that while they maintain that their land has been taken arbitrarily and without compensation, and that they have been denied fair administrative action, they have not responded to the averments by **Mr. Josiah Mwangi Wandurua** in his affidavit sworn on 10th December 2014 in the ELC case which is annexed to the affidavit of Mr. Bosire sworn in opposition to this petition.

50. In his affidavit, Mr. Wandurua, the Chief Sociologist of the respondent, deposes as follows:

11. That for those with titles [genuine or otherwise] the matter was referred to the National Lands Commission (MLC) who are processing the relevant acquisitions and/or reviews – as the case may be. But for those without titles like the Plaintiffs herein, a comprehensive consultative resettlement and or relocation process commenced.

12. That pursuant to the foregoing the Nairobi City County (NLC), the successor to the now defunct Nairobi City Council, and who is the 2nd Defendant herein ceased any further issuance of the temporary Occupation Licenses in 2012 to the Plaintiffs along the corridor of the Outer Ring Road bringing its reserve's legal occupancy to an end to pave way for the ensuing

construction works. Any rents or rate levied subsequently were rendered pending relocation.

13. That this then ushered in the relocation phase. What were now being worked out were the manner and/ or mode of relocation and/ or resettlement. Various options including relocation to available spaces within existing City County Markets or in lieu thereof ex-gratia payment or disturbance allowances/ token have been considered, hence the proposed Ksh50,000/- for the stall allottees and Kshs10,000/- for their tenants.

14. That to facilitate such relocation, a resettlement Action Plan (RAP) was drawn up and a resettlement and relocation committee (RRC) set up to oversee its implementation. The RRC met with officials of the various groups of the persons to be affected by the Project [PAPS] along the projects corridor to discuss the RAP and its implementation.

15. That pursuant to the foregoing propositions, the RRC coopted and has been working closely with officials of the plaintiffs led by their chairman a Mr. Abdul Akio, Cell Phone No 0722654-096 and their Secretary a Mr. Jared Arua Cell Phone No 0724260527.

51. The petitioners did not dispute Mr. Wandurua's averments, nor the fact that it was on the basis of this evidence that the Environment and Land Court determined that they were only entitled to a period of 45 days within which to move from the road reserve, and to a disturbance award which it deferred assessment of and directed that they file their replies to the respondent's replying affidavit.

52. As deposed by Mr. Bosire and submitted by Mr. Mutinda, the current petition was filed as a way of getting away from a decision that had been made by a court which has the constitutional mandate to deal with the issue at hand- the alleged violation of the petitioner's right to the land at issue, and to answer the question whether the petitioners are entitled to the land on which the market stalls they were carrying on business in were situated.

53. It is undisputed that this Court has wide jurisdiction under Article 165(3), which jurisdiction includes:

- a. *Unlimited original jurisdiction in criminal and civil matters;*
- b. *Jurisdiction to determine the question whether a right or fundamental freedom in the Bill of Rights has been denied, violated, infringed or threatened;*
- c. ...

54. However, the Constitution itself expressly limits this jurisdiction with respect to land and employment matters when it provides at Article 165 (5) (b) as follows:

The High Court shall not have jurisdiction in respect of matters falling within the jurisdiction of the courts contemplated in Article 162 (2).

55. Article 162 (2) then provides that:

Parliament shall establish courts with the status of the High Court to hear and determine disputes relating to-

- a. *Employment and labour relations; and*
- b. *The environment and the use and occupation of, and title to, land.*

56. Pursuant to this constitutional provision, Parliament enacted the Environment and Land Court Act, Chapter 12A, Laws of Kenya, 2012, which established the Environment and Land Court whose jurisdiction is provided for under section13 of the Act as follows:

1. *The Court shall have original and appellate jurisdiction to hear and determine all disputes in*

accordance with Article 162(2) (b) of the Constitution and with the provisions of this Act or any other law applicable in Kenya relating to environment and land.

2. *In exercise of its jurisdiction under Article 162(2)(b) of the Constitution, the Court shall have power to hear and determine disputes—*
 - a. *relating to environmental planning and protection, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources;*
 - b. *relating to compulsory acquisition of land;*
 - c. *relating to land administration and management;*
 - d. *relating to public, private and community land and contracts, choses in action or other instruments granting any enforceable interests in land; and*
 - e. *any other dispute relating to environment and land.*

57. It is therefore clear that matters relating to title to land, and more specifically, issues pertaining to compulsory acquisition, are well within the mandate of the Environment and Land court. The Jurisdiction of the said court was further reiterated by the Court in **Tasmac Limited vs Roberto Marci and 2 Others, Misc. App. No 5 of 2013**, where it was held that:

[12]“ The jurisdiction of the court has been defined to mean the authority which a court has to decide matters that are litigated before it or to take cognisance of matters presented before it in a formal way for its decision.

[13] The limits of this authority are imposed by the Constitution or a statute. If no restriction or limit is imposed, the jurisdiction is said to be unlimited. This is the kind of jurisdiction that the High Court had before the promulgation of the current Constitution.

[14] The Environment and Land Court is established pursuant to the provisions of Article 162 (2) (b) of the Constitution. It is one of the Superior Courts alongside the Supreme Court, the Court of Appeal, the High Court and the Industrial Court.

[15] According to the provisions of Article 162 (2) (b) of the Constitution, Parliament was mandated to establish courts with the status of the High Court to hear and determine disputes relating to the environment and the use and occupation of, and title to land, thus the enactment of the Environment and Land Court Act No.19 of 2011.

[16] The Jurisdiction of the court is found at Section 13(1) of the Environment and Land Court Act No. 19 of 2011 which is an exposition of the provisions of Article 162(2) (b), which is to determine disputes relating to the Environment and the use, occupation and ownership of land.”

58. In light of the provisions of the Constitution, the Environment and Land Court Act, and the exposition of the law with regard to the jurisdiction of the Court in the **Tasmac** case set out above, it is indisputable that the present petition is in the wrong forum, and appears to have been intended to avoid and defeat the decision that had been arrived at by the Court with the jurisdiction to deal with the issues in dispute.

59. To reiterate, the petitioners allege that they are the owners of the property on which Tena Market stood, and which has now been utilised for the expansion of the Outer Ring Road. They are aggrieved with the amount of compensation that the respondent offered on what they term compulsory acquisition, but which the respondent terms as a disturbance allowance for requiring persons with no legal right to the land to move. Whatever term one gives it, the proper forum for the determination of the matter was the Environment and Land Court, not this Court.

60. The Environment and Land Court had, in **ELC No. 1484 of 2014**, heard the parties on the plaintiffs' application for conservatory orders, and had determined that they needed to move from the road reserve and ventilate their claim with regard to compensation or disturbance allowance thereafter. That the petitioners were misguided enough or misadvised to withdraw that suit and file the present petition is a matter of regret, for it demonstrates a misuse of the court process which this Court cannot countenance.

61. With respect to their claim of violation of Article 47 on the right to fair administrative action, the Court takes the view that this is again a claim without merit. As can be observed from the deposition by Mr. Wandurua set out above, an inclusive process that involved consultation with the petitioners and others on the relocation and resettlement plan was in place. Indeed, Mr. Akio and Mr. Aruwa, according to Mr. Wandurua, were co-opted and were part of the resettlement and relocation committee (RRC) which was dealing with the relocation of the petitioners, among others. For the petitioners, particularly Mr. Aruwa and Mr. Akio to swear on oath that they were not consulted or heard with regard to the relocation shows a lack of honesty that is to be deprecated.

62. At any rate, taking all the above matters into account, I find no merit in the present petition. It is therefore hereby dismissed. However, notwithstanding the lack of candour on the part of the petitioners, I will not, as prayed by the respondent, burden them with costs. It is my order therefore that each party bears its own costs of the petition.

Dated, and Signed at Nairobi this 16th day of March 2016

MUMBI NGUGI

JUDGE

Dated, Delivered and Signed at Nairobi this 17th day of March 2016

J.L. ONGUTO

JUDGE

Mr. Midenga and Ms. Maumo instructed by the firm of Miyare & Co. Advocates for the petitioners.

Mr. Mutinda instructed by the State Law Office for the respondent.