



REPUBLIC OF KENYA

THE ENVIRONMENT AND LAND COURT IN MOMBASA

ELC PETITION. NO 43 OF 2021

SPARKLE PROPERTIES LIMITED.....PETITIONER

-VERSUS-

NATIONAL LAND COMMISSION.....1ST RESPONDENT

KENYA RAILWAYS CORPORATION..... 2ND RESPONDENT

RULING

The application is dated 2nd November 2021 and is brought under Section 1A (1), 3A and 63(e) of the Civil Procedure Act Cap 21, Order 1 Rule 10 (2) and Order 51 Rule 1 of the Civil Procedure Rules 2010 seeking the following orders;

1. The claim against the 2nd Respondent in the Petition dated 24th September 2021 and filed on 4th October 2021 be dismissed with costs.
2. Costs of this application be provided.

It is based on the grounds that the Environment and Land Court lacks jurisdiction to hear and determine this suit because the Petition dated 24th September 2021 does not raise any bona-fide constitutional issues. The pleaded claim for payment of compensation award is an ordinary dispute of debt collection and/or enforcement of a contract with the government, which does not merit the exercise of the Environment and Land Court's constitutional jurisdiction. The Environment and Land Court lacks jurisdiction to hear and determine this dispute to the extent that it is challenging the compulsory acquisition of land by the National Land Commission because Prayer (b) of the Petition dated 24th September 2021 acknowledges that the actions of the Respondent constitute compulsory acquisition under part VIII of the Land Act in respect of the suit property. Section 112 of the Land Act vests the jurisdiction to hear and determine disputes on the ownership, value and compensation payable on the recommendation by the Commission's Inquiry established under Section 112 and the Gazette Notice dated 7th January 2015 and issued on 9th January 2015. The Petition dated 24th September 2021 does not disclose any cause of action against the 2nd Respondent because the Petitioner is claiming for compensation in the sum of Kshs. 192,015,974/= plus interest for the compulsory acquisition of the suit property. Section 125 (1) of the Land Act imposes the obligation to pay compensation for compulsory acquisition on the National Land Commission. Section 117(1) of the Land Act imposes the obligation to pay interest for unpaid compensation on the same National Land Commission. The 2nd Respondent does not have any legal duty to compensate the Petitioner for compulsory acquisition or to pay interest arising therefrom. Consequently, the plea for compensation and other reliefs sought in the Petition dated 24th September 2021 on compulsory acquisition do not lie as against the 2nd Respondent. The Petitioner had not been paid compensation because the suit property was at the time the subject of a pending court case being Mombasa ELC No. 265 of 2013 Sparkle Properties Limited v Johana Ngai & Others. On 24th February 2020, the pending case was finalized when the Court delivered its judgement in favour of the Petitioner. After final determination of the case, the 2nd Respondent remitted to the National Land Commission funds to compensate affected persons including the Petitioner. On 2nd July 2021, the 2nd Respondent remitted to the National Land Commission a total of Ksh.1,223,949,263.20/= for purposes of paying compensation to persons affected by compulsory acquisitions for the SGR project. The 2nd Respondent having already remitted the fund, the claim for compensation lies squarely against the National Land Commission, and not the 2nd Respondent.

This court has considered the application and submissions therein. In the case of **Owners of the Motor Vessel "Lillian S" vs Caltex Oil (Kenya) Ltd (1989) I KLR** which dealt with a court's jurisdiction on a matter before it, the court stated as follows;

"I think that it is reasonably plain that a question of jurisdiction ought to be raised at the earliest opportunity and the court seized of the matter is then obliged to decide the issue right away on the material before it. Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law downs tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction."

The Supreme Court decision on exercise of jurisdiction in the case of **Samuel Kamau Macharia & Another vs Kenya Commercial Bank & 2 Others, Application No.2 of 2011** held as follows;

“68. A court’s jurisdiction flows from either the constitution or legislation or both. Thus, a court of law can only exercise jurisdiction as conferred by the constitution or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law.....where the constitution exhaustively provides for the jurisdiction of a court of law, the court must operate within the constitutional limits. It cannot expand its jurisdiction through judicial craft or innovation.”

This court’s jurisdiction emanates from the provisions of Article 162(2) (b) of the Constitution and Section 13 of the Environment and Land Court Act (*the ELC Act*). Article 162(2)(b) of the Constitution provides as follows:

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

(b) the environment and the use and occupation of, and title to, land.”

Parliament enacted the Environment and Land Court Act in compliance with the provisions of Article 162(3). Section 13 of the Environment and Land Court Act provides 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.

(3) Nothing in this Act shall preclude the Court from hearing and determining applications for redress of a denial, violation or infringement of, or threat to, rights or fundamental freedom relating to a clean and healthy environment under Articles 42, 69 and 70 of the Constitution.”

From the law cited above I find that this court has jurisdiction to deal with the matter. The 2nd Respondent stated that they do not have any legal duty to compensate the Petitioner for compulsory acquisition or to pay interest arising therefrom. Consequently, the plea for compensation and other reliefs sought in the Petition dated 24th September 2021 on compulsory acquisition do not lie as against the 2nd Respondent. I find that these are issues to be determined when the matter goes to full trial and not at this preliminary stage. I find this application is not merited and dismiss it. Costs to be in the cause.

It is so ordered.

DELIVERED, DATED AND SIGNED AT MOMBASA THIS 22ND DAY OF FEBRUARY 2022.

N.A. MATHEKA

JUDGE