



REPUBLIC OF KENYA



**KENYA LAW**  
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**Farah v National Lands Commission & another (Environment & Land  
Case E9 of 2020) [2025] KEELC 3361 (KLR) (24 April 2025) (Judgment)**

Neutral citation: [2025] KEELC 3361 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA  
ENVIRONMENT & LAND CASE E9 OF 2020**

**JM MUTUNGI, J**

**APRIL 24, 2025**

**BETWEEN**

**MOHAMED SHEIKH BULLE FARAH ..... PLAINTIFF**

**AND**

**NATIONAL LANDS COMMISSION ..... 1<sup>ST</sup> DEFENDANT**

**KENYA ELECTRICITY GENERATING COMPANY (KENGEN .... 2<sup>ND</sup>  
DEFENDANT**

**JUDGMENT**

1. The Plaintiff instituted the present suit by way of the Plaint dated 10<sup>th</sup> November 2020, seeking the following orders:
  1. A declaration that the restriction placed by the Defendant is unlawful, illegal and an abuse of the Plaintiff's rights.
  2. An order for the removal of the unlawful and illegal restriction registered over the land title No. Kiine/Rukanga/1196 forthwith and a permanent injunction be issued restraining the Defendant's or any persons claiming through them from interfering with the Plaintiffs use of the suit land.
  3. Costs and interest of this suit.

**The Plaintiff's case**

2. The Plaintiff asserted that he is the registered owner of land parcel No. Kiine/Rukanga/1196 (suit land). He stated that he purchased the suit land for valuable consideration and that the title was transferred to his name on 27<sup>th</sup> October 2017. He contended that on or about 20<sup>th</sup> December 2017,



the 1<sup>st</sup> Defendant registered a restriction on the suit land on behalf of the 2<sup>nd</sup> Defendant, prohibiting any dealings with the property until its alleged acquisition by the 2<sup>nd</sup> Defendant was finalized.

3. The Plaintiff alleged that the restriction was placed without following the due process for compulsory acquisition, thereby violating his rights under Article 40 of *the Constitution*. He contended that the restriction had prevented him from utilizing or developing his parcel of land. He sought the withdrawal of the restriction that was registered at the instance of the 1<sup>st</sup> Defendant allegedly for the benefit of the 2<sup>nd</sup> Defendant on the allegation that land parcel Kiine/Rukanga/527 from which the suit land was subdivided was compulsorily acquired and compensation paid for Upper Tana Reservoir. The Plaintiff contended no process of compulsory acquisition was carried out and no compensation was made. He averred the restriction was unlawfully registered and without any reference to him as the registered owner. He asserted that the restriction lodged on 20<sup>th</sup> December 2017 violated his rights under Article 40 of *the Constitution* and lacked any legal justification.

### **Defendant's Case**

4. The 2<sup>nd</sup> Defendant filed its statement of defence on 2<sup>nd</sup> February 2021, and averred that the suit land was part of land parcels affected by the construction of the Masinga Dam, leading to its compulsory acquisition. The 2<sup>nd</sup> Defendant claimed that compensation had already been paid for the affected land, including the original parcel Kiine/Rukanga/527.
5. The 2<sup>nd</sup> Defendant asserted that the registration of the restriction was an initial step toward the compulsory acquisition of the suit land and claimed that this process of acquiring the suit land was necessary because it was intended for public utility purposes, specifically to support electricity generation provided by the 2<sup>nd</sup> Defendant. Thus, the 2<sup>nd</sup> Defendant contended that the imposition of the restriction was intended to advance the compulsory acquisition of the suit land for its benefit. The 2<sup>nd</sup> Defendant argued that the 1<sup>st</sup> Defendant acted lawfully and within its mandate when restricting the suit land. In addition, the 2<sup>nd</sup> Defendant stated that there had been no violation of the Plaintiff's rights and claimed that if the Plaintiff had not received compensation, the compensation process was still underway. The 2<sup>nd</sup> Defendant denied the allegations of breach made by the Plaintiff and asserted that there was no violation of the Plaintiff's rights concerning the suit land.
6. The Plaintiff's case was heard on 20<sup>th</sup> May 2024. The Plaintiff testified that he purchased the suit land in 2017 from his father and explained that the land originally belonged to his Aunt who had been registered as owner in 1985. He testified that his aunt gifted the land to his father in 2017. He stated that there was a restriction registered against the title that was removed by TARDA before the property was transferred to him. The Plaintiff stated that he sued the Defendants after he obtained a search of his title on 4<sup>th</sup> September 2020 which revealed a restriction had been placed against the title at the instance of the 1<sup>st</sup> Defendant. The Plaintiff claimed he did not understand the reason the defendants placed the restriction on the land. He stated that he came to Court to seek an order to lift the restriction, stating that it was hindering his ability to use the land. He contended that the defendants had no valid reason to restrict his use of the suit land.
7. During cross-examination, he reiterated that his father received the title for the suit land in July 2017 and transferred it to him in October 2017. He confirmed that the suit land was a subdivision of the original suit land known as Kiine/Rukanga/527. He affirmed that the search of the original suit land indicated that there was a restriction that was placed in 1975. The Plaintiff asserted that he was unaware of any Government compulsory acquisition concerning the original suit land and that he had not seen any Kenya Gazette Notice issued by the Government relating to any compulsory acquisition of the suit land.



8. On 22<sup>nd</sup> October 2024, Philemon Nyamweya Nyangoya, the property manager for the 2<sup>nd</sup> Defendant, testified on behalf of the 2<sup>nd</sup> Defendant. He adopted his witness statement and relied on the bundle of documents exhibited by the 2<sup>nd</sup> Defendant in his evidence. In cross-examination, he asserted that the 2<sup>nd</sup> Defendant was wrongly sued. He stated that the 2<sup>nd</sup> Defendant had written to the Plaintiff's Advocate at the time, affirming that they had placed a caveat on the suit land, in response to the KNLC letter dated 20<sup>th</sup> December 2017. He stated that the 2<sup>nd</sup> Defendant had compensated the owners of land parcel Kiine/Rukanga/527 and stated that a letter from TARDA confirmed this payment. However, he admitted that he had not produced any gazette notice to support the claim of payment. When referred to the letter dated 11<sup>th</sup> July 1984, he stated that the original suit land was described as "cleared," which he interpreted to mean that it was paid for. He confirmed the abstract of title of the suit land indicated that the restriction had been lifted, and that the Plaintiff was registered as the owner. The witness testified that according to a letter dated 15<sup>th</sup> August 2008, TARDA had paid compensation for land parcel Kiine/Rukanga/527 and that only a portion of 0.295 Hectares of the said original land parcel was affected.

### **Submissions, analysis and determination.**

9. The parties filed final closing submissions as per the directions of the Court. The Plaintiff's Advocates submissions were dated 12<sup>th</sup> November 2024 and those of the 2<sup>nd</sup> Defendant's Advocates were dated 5<sup>th</sup> February 2025.

10. The Plaintiff's Counsel in his submissions contended the 2<sup>nd</sup> Defendant was properly joined as a party in the proceedings as the search of the title showed the restriction, though registered at the instance of the 1<sup>st</sup> Defendant, was said to be for the benefit of the 2<sup>nd</sup> Defendant. The restriction registered as Entry No. 13 was in the following terms:-

“ 13. 2.1.18 Restriction. No dealings until acquisition claimed by Kengen is ascertained Ref. NLC 8/20/4/1 of 20.12.17 by NLC.”

10. The 2<sup>nd</sup> Defendant further exhibited a letter dated 20<sup>th</sup> December, 2017 from the National Land Commission addressed to the Chief Land Registrar setting out various land titles including the suit land in respect of which, the Commission sought restrictions to be placed. The first paragraph of the letter read as follows:-

“Kengen have written to the Commission requesting for restrictions to be placed on land that was acquired for Upper Tana Reservoir and Tana Power Station pending vesting of the titles in the State Corporation. We are in agreement that the titles in Murangá and Kirinyaga registries should be restricted.”

11. It is evident having regard to the foregoing that the 2<sup>nd</sup> Defendant indeed had an interest in the suit land and was in fact the party that instigated the placing of the restriction. The 2<sup>nd</sup> Defendant was in my view a necessary party and was properly joined in the proceedings.

12. The Plaintiff's Counsel further submitted that although the 2<sup>nd</sup> Defendant pleaded the restriction was placed against the title by the 1<sup>st</sup> Defendant in accordance with the law and pursuant to its statutory mandate to compulsorily acquire any land by the Government for public use, there was no credible evidence to prove that any compulsory acquisition occurred and compensation was paid. The Plaintiff submitted there was no evidence of the normal Notice of Intention to compulsorily acquire; No Notice of inquiry and no Notice of award and payment of the award. The Plaintiff maintained his position that the restriction was unlawfully registered and prayed for the same to be lifted and/or discharged.



13. The 2<sup>nd</sup> Defendant in its submissions affirmed that it never participated in the compulsory acquisition stating that such mandate fell on the 1<sup>st</sup> Defendant. The 2<sup>nd</sup> Defendant however submitted the land was acquired for use by the 2<sup>nd</sup> Defendant and asserted that the documents the 2<sup>nd</sup> Defendant had tendered in evidence provided sufficient proof that the land was indeed acquired compulsorily.
14. Having reviewed the pleadings the evidence and the submissions made by the parties, the issues that arise for determination are as follows:-
- (i) Whether the Plaintiff's land was compulsorily acquired for public purposes?
  - (ii) Whether the restriction placed against the title of the suit property was unlawful?
  - (iii) Whether the Plaintiff was entitled to the reliefs sought?
15. It is the 2<sup>nd</sup> Defendant's claim that the Plaintiff's land parcel Kiine/Rukanga/1196 together with other lands was compulsorily acquired with other lands for purposes of acting as a reservoir for the Masinga Dam. The Defendants position was that the owners of the affected lands were duly compensated. That was the justification the Defendants had for placing a restriction on the Plaintiff's land while awaiting the vesting of the land in the 2<sup>nd</sup> Defendant's name being the party that was undertaking the project of power generation.
16. Both the Land Act, 2012 and the Land Acquisition Act, Cap 295 Laws of Kenya (now repealed) have an elaborate process of compulsory acquisition of land for public purpose. Article 40(3) of the Constitution provides as follows:-
- (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.
17. The process of land acquisition has to be followed and compensation paid for compulsory acquisition to be held to be lawful. In the case of Eunice Grace Njambi Kamau & Another –vs- Attorney General & 5 Others (2013) eKLR this Court while sitting at Nairobi considered the obligations of the Commissioner of Lands under the repealed Land Acquisition Act and I rendered itself as follows:-
- “In my view and having regard to the provisions of the Land Acquisition Act (now repealed) the Government has an obligation to execute the process of land acquisition to finality to effectuate title acquisition. The Commissioner of Lands and the Land Registrars as regard land acquired by the Government compulsorily have duties and obligations which they are required to execute to ensure such land is properly documented and protected. I believe that was the intention for the elaborate process and procedure set out under the Land Acquisition Act (repealed) and now reproduced under Part VIII of the Land Act No.6 of 2012 Sections 107 to 133...”.



18. In the Case of Vendra Ramji Gudka & 3 Others –vs- Attorney General (2014) eKLR again sitting at Nairobi I explained what would entail a compliant compulsory acquisition as follows:-

“The fact is there were no records of the acquisition at the Lands Registry and/or with the Director of Surveys. In my view a Gazette Notice for intended acquisition alone cannot effectuate a compulsory acquisition and in order to effectuate the acquisition the procedure for acquisition as under the Act has to be adhered to. The Gazette Notice notifying the payment of the compensation can only affect the parties directly affected such as the registered proprietors at the time the notice of compulsory acquisition is given. Third parties dealing with the acquired land can only be put on notice if the process of acquisition is completed and the provisions of Section 19 and 20 of the Act complied with”.

19. In the present matter, there is no evidence that has been proffered to prove that there was a lawful compulsory acquisition of the Plaintiff’s land and/or any part of it. No Gazette Notice of intention to compulsorily acquire was exhibited and neither was any evidence of an award of compensation adduced. The particulars and specifications of the land acquired are unclear. The evidence adduced points to the original land parcel number Kiine/Rukanga/527 having been the target land. How much of that land was to be acquired and for how much? Was any compensation paid, and if so, to whom? Land parcel Kiine/Rukanga/1196 now registered in the Plaintiff’s name measures 3.54 Hectares yet the indication was that only a portion of 0.295 Ha out of land parcel Kiine/Rukanga/527 was affected. No evidence was led to show who the registered owner of land parcel Kiine/Rukanga/1197, which was the other subdivision of parcel Kiine/Rukanga/527, was. Is it possible that, that was the portion acquired by the Government? What was the explanation for TARDA lifting the Restriction registered on 15<sup>th</sup> November 1985 on 1<sup>st</sup> February 2016 vide their letter of 11<sup>th</sup> January 2016 as noted in the extract of title of land parcel Kiine/Rukanga/1196? These queries were begging for answers which were unavailable.
20. The Court of Appeal in the case of Commissioner of Lands –vs- Coastal Aquaculture Ltd (1997) eKLR while upholding the Judgment by Ringera, J (as he then was) held that for land to be deemed compulsorily acquired there had to be strict adherence to the mandatory legal process that guides the acquisition process. The Court approved Ringera, J’s dicta where he stated:-

“As regards the adequacy and validity of the notice published under Section 6(2) I have come to the Judgment that notice should reflect the Minister’s certificate to the Commissioner under Section (1) and must accordingly include the identity of the public body for whom the land is acquired and the public interest in respect of which it is acquired. It is only when a notice contains such information that a person affected thereby can fairly be expected to seize his right to challenge the legality of the acquisition. That is because the test of the legality of the acquisition is whether the land is required for public body for a public benefit and such purpose is so necessary that it justified hardship to the owner. Those details must be contained in the notice itself for the prima facie validity of the acquisition must be judged on the content of the notice. The test must be satisfied at the outset and not with the aid of subsequent evidence -----”.

21. In the instant case there is no proof there was a compulsory acquisition of the Plaintiff’s land parcel Kiine/Rukanga/1196 for any purpose. I hold it was not so acquired. Having held there was no compulsory acquisition of the suit land, it follows that the registration of the restriction against the title was unjustified and was therefore unlawful.



22. After evaluation and analysis of the evidence and the applicable Law. I am satisfied the Plaintiff has proved his case against the Defendants on a balance of probabilities and is entitled to Judgment. I accordingly enter Judgment in favour of the Plaintiff in the following terms:-

- a. That the restriction registered against title Kiine/Rukanga/1196 on 2<sup>nd</sup> January 2018 was unjustified and unlawful.
- b. The Land Registrar Kirinyaga, be and is hereby ordered to cancel and remove the restriction registered under Entry No. 13 against the title Kiine/Rukanga/1196.
- c. The Plaintiff is awarded the costs of the suit as against the Defendants jointly and severally.

**JUDGMENT DATED, SIGNED AND DELIVERED VIRTUALLY AT KERUGOYA THIS 24<sup>TH</sup> DAY OF APRIL 2025.**

**J. M. MUTUNGI**

**ELC - JUDGE**

