



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT KISUMU**  
**ENVIRONMENT & LAND COURT**  
**JUDICIAL REVIEW CASE NO.8 OF 2013**

**NARESHKUMAR RAMBHAI PATEL, ..... 1ST APPLICANT**

**DAXABEN NARESHKUMAR PATEL..... 2ND APPLICANT**

**NILESHKUMAR MULJIBHAI PATEL..... 3RD APPLICANT**

**VERSUS**

**LAND ACQUISITION & COMPENSATION TRIBUNAL .....1ST RESPONDENT**

**THE COMMISSIONER OF LANDS.....2ND RESPONDENT**

**CHAIRMAN NATIONAL LAND COMMISSION.....3RD RESPONDENT**

**J U D G M E N T**

**1. INTRODUCTION**

(a) **Nareshkumar Rambhai Patel, Daxaben Nareshkumar Patel and Nileshkumar Muljibhai Patel**, herein after referred to as the 1st to 3rd Exparte applicants respectively, filed the notice of Motion dated 23<sup>rd</sup> April 2013 for orders of Prohibition, certiorari, mandamus and costs against the land Acquisition Compensation Tribunal and Commissioner of Lands, hereinafter referred to as 1<sup>st</sup> and 2<sup>nd</sup> Respondents respectively.

(b) The application is based on the five grounds on the notice of Motion, the undated statement of facts, verifying and further affidavits sworn by Naresh Kumar Rambhai Patel on 21<sup>st</sup> March 2013 and 4<sup>th</sup> November 201, respectively.

(c) The application is opposed by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents through the verifying affidavit of Elias Gitari Rwigi, sworn on 14<sup>th</sup> October 2013.

2. The Exparte Applicants filed the Chamber Summons dated 24th September 2014 to enjoin the Chairman National Land Commission as a respondent. The application was granted on 29th September 2014. There is however nothing to confirm that the National Land Commission has been served with the pleadings herein and the order enjoining them as Respondent. The affidavits of service of Dominic Ouma Olang and Mitchell J.B. Menezes, sworn on 10th April 2015 are about service of a hearing notice

dated 2<sup>nd</sup> April 2015. The National Land Commission did not participate in the proceedings of this case.

3. That on the 15<sup>th</sup> April 2015, counsel agreed to have the notice of Motion dated 23<sup>rd</sup> April 2013 dealt with through written submissions. The Exparte Applicants counsel filed their submissions dated 7<sup>th</sup> May 2015 while counsel for the Respondents filed theirs dated 9<sup>th</sup> June 2015.

4. The court has identified the following as the main issues for determination.

(a) Whether the acquisition of Kisumu/Kasule/439 was conducted in accordance with the Land Acquisition Act, Chapter 295 of Laws of Kenya (Now repealed), or the Land Act No.6 of 2012.

(b) Whether the decision of the Respondents in regard to the award for Kisumu/Kasule/439 was arrived at following the due process.

(c) Whether any of the orders sought should issue.

(d) Who pays the costs.

5. The court has considered the grounds on the notice of motion, the statements of facts, the affidavit evidence presented by both parties and the submissions by counsel and come to the following conclusion;

(a) That the copy of the register for Kisumu/Kasule/439 shows that the land was first registered on 13<sup>th</sup> March, 1988 and the first registered proprietor was George Olan'g Owoth. A title deed was issued to the said George Olan'g Owoth of national identity card number 0272172 on 16<sup>th</sup> October 1997. The register further shows that on 12<sup>th</sup> July 2011 there was a correction of names of the registered proprietor from George Olan'g Owoth to Henry Olan'g Owoth of National identify card number 23126860 and a title deed was issued on the same date. Then on the 22<sup>nd</sup> September 2011, the three Exparte Applicants became the registered proprietors of the said land and a title deed was issued. A copy of the title deed issued on 22<sup>nd</sup> September 2011 is also annexed.

(b) That the documents annexed to the replying affidavit, specifically the copy of the gazatte notice number 8753, 8754 and the letter of award dated 15<sup>th</sup> February 2011 addressed to George Oland Awoth confirms the Respondents contention that the acquisition process was commenced and completed when the Land Acquisition Act, Chapter 295 of Laws of Kenya was in force. The process took place between July 2010 to February 2011. The copy of the register for the suit land annexed to the verifying affidavit confirms that the registered proprietor during the said period was indeed George Olang Owoth. There is nothing on record to show that the said George Olan'g Owoth filed any appeal with the Land Acquisition Compensation Tribunal after receipt of the award dated 15<sup>th</sup> February 2011.

(c) The Exparte Applicants not being the registered proprietors of the suit land at the time of the acquisition process and not having lodged any claim for compensation had no locus standi to challenge the process of acquisition. The Exparte Applicants became registered as proprietors of the suit land after the process of acquisition had been completed. It is surprising how Henry Olang Owoth was entered in the register on 12<sup>th</sup> July 2011, purportedly through a correction of names (CON) process, and transferred the same to the Exparte Applicants on 22<sup>nd</sup> September 2011. The Exparte Applicants recourse rests elsewhere but not through the judicial review process proceedings.

5. That having found that the acquisition process for Kisumu/Kasule/439 was commenced through the gazatte notice of 23<sup>rd</sup> July 2010 and concluded through the letter of award dated 15<sup>th</sup> February 2011, then the contention by the Exparte Applicants that no appeal could be lodged with the Land Acquisition Compensation Appeal Tribunal ostensibly as it had ceased to exist cannot be true. The Land Acquisition Act remained in force until 2<sup>nd</sup> May 2012 when the Land Act no.6 of 2012 became operational and no appeal had been preferred by then. The acquisition process was done in accordance with the Land Acquisition Act and not the Land Act.

6. That for reasons set out above the Notice of Motion dated 23rd April 2013 is without merit and is dismissed with costs.

**S.M. KIBUNJA**

**ENVIRONMENT & LAND - JUDGE**

**28/10/2015**

Dated and delivered this **28th day of October 2015**

In presence of

Applicants N/A

Respondents N/A

Counsel N/A

**S.M. KIBUNJA**

**ENVIRONMENT & LAND - JUDGE**

**28/10/2015**

28/10/2015

S.M. Kibunja

Court clerk Oyugi

Parties absent

Mr Indimuli for Nyamweya for Applicants

Court: Judgment dated and delivered in open court in presence of Indimuli for Nyamweya for Applicants.

**S.M KIBUNJA**

**ENVIRONMENT & LAND – JUDGE**

**28/10/2015**

Mr Indimuli: I seek leave to appeal.

**S.M KIBUNJA**

**ENVIRONMENT & LAND – JUDGE**

28/10/2015

Court: Right of appeal is automatic but nevertheless granted.

**S.M KIBUNJA**

**ENVIRONMENT & LAND – JUDGE**

**28/10/2015**