



Gatu & another (Suing as the administrators of the Estate of Isaak Gatu alias Isaac Gatu alias Isaack Gatu - Deceased) v Kenya National Highways Authority (KENHA) & another (Constitutional Petition E005 of 2023) [2025] KEELC 3273 (KLR) (7 April 2025) (Ruling)

Neutral citation: [2025] KEELC 3273 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
CONSTITUTIONAL PETITION E005 OF 2023**

JA MOGENI, J

APRIL 7, 2025

BETWEEN

JOHN NJOROGÉ GATU 1ST PETITIONER

MERCY WAMBUI GATHU 2ND PETITIONER

**SUING AS THE ADMINISTRATORS OF THE ESTATE OF ISAAK GATU ALIAS
ISAAC GATU ALIAS ISAACK GATU - DECEASED**

AND

KENYA NATIONAL HIGHWAYS AUTHORITY (KENHA) 1ST RESPONDENT

NATIONAL LAND COMMISSION 2ND RESPONDENT

RULING

1. This determination is on the Preliminary Objection raised by the 1st Respondent dated 14/01/2024 that:
 1. This Honorable Court has no jurisdiction to entertain, hear or determine the Petition.
 2. From the facts pleaded in the Petition, it is patently clear that the dispute herein is in fact and in substance a dispute by alleged land owners and National Land Commission in respect of a process of payment of compensation or non-payment thereof
 3. In the premises the issues stated in the Petition ought to first be dealt with in the dispute resolution mechanisms mandatorily prescribed under Section 112 -117 and 133C of the [Land Act](#) of 2012
 4. Specifically Section 133C (6) demands that; despite the provisions of Sections 127, 128 and 148 (5), [Land Act](#); a matter relating to compulsory acquisition of land or creation of way leaves,



easement and public right of way shall in the first instance, be referred to the Tribunal. (Part VIIA Land Act sets up – The Land Acquisition Tribunal)

5. Under Sections 112 (1)(2)(3)(4)(5) and (6) of the Land Act of 2012, any dispute of the nature raised in the Petition herein must first be subjected to the inquiry process to be conducted by the National Land Commission.
 6. Judicial proceedings would be instituted only as the last resort and even then such proceedings would be lodged first before the Land Acquisition Tribunal established under Section 133 A (1) of the Land Act No. 6 of 2012.
 7. Section 133 C (6) of the Land Act No. 6 of 2012 specifically states that disputes relating to compulsory acquisition of land ought to first be lodged with Land Acquisition Tribunal
 8. Proceedings before this Honorable Court can only be instituted through an appeal against the decision of the Land Acquisition Tribunal and to the limited extent stipulated in Section 133 D of the Land Act No. 6 of 2012.
 9. This Petition is therefore premature, mischievous, vexatious and an abuse of the Court process.
 10. The proceedings before the Honorable Court are fatally defective having commenced per incuriam.
 11. The suit is therefore an abuse of the process of Court and should be dismissed with costs.
2. In the Petition before the Court, the reliefs sought as per the Petition are for:
- i. A declaration that your Humble Petitioners rights as enriched under Article 40(3) and 47 (1) of the Constitution of Kenya 2010 have been violated and infringed by the Respondents, jointly and severally in the manner pleaded herein above.
 - ii. An order directing the Respondents jointly and severally to forthwith compensate the Petitioner in the sum awarded by the 2nd Respondent in the sum of Kesh 53, 341,145
 - iii. An order that the Petitioner is entitled to interest on the compensation awarded by the 2nd Respondent from the date of the award or such earlier period from when the 1st Respondent took over the portion of Limuru/Kamirithu/755 compulsory acquired until payment in full at Commercial rates.
 - iv. An order directing the 2nd Respondent to within a period of thirty (30) days or such other time as the Honorable Court shall deem reasonable upon compensating the Petitioners remove the caution placed on the suit property on 11th May 1973 after excising the 0.3413 Ha compulsory acquired out of LR Limuru/Kamirithu/755 to facilitate the Petitioners deal with the remainder of the suit in terms of the Confirmed Grant issued in Limuru SPMC Succession Cause No. E 024/21.
 - v. Costs of the Petition be borne by the Respondents.
3. When the parties appeared in Court on 20/02/2025, Ms Kisengese for the 2nd Respondent informed the Court that she had filed Preliminary Objection dated 5/02/2024. The said Preliminary Objection states that the Honorable Court lacks the jurisdiction to entertain the suit as it offends the provisions of Sections 133A and 133C of the Land Act No. 6 of 2012. Reasons wherefore the suit ought to be struck out and dismissed with costs.



4. Despite my best efforts to trace written submission on the Case Tracking System (CTS) or on physical file by the parties, there were none. Thus the Ruling of the Court has not benefited from the submission of the parties vide their written submissions.
5. Now, does this Court have original jurisdiction to hear the dispute? In answering this question, I note that the Petition does not challenge the compulsory acquisition except the Petitioners wish to be fully compensated as provided in Article 40 (3) of *the Constitution*. Thus their Petition is intended to enforce the provisions of Article 40 (1). Further that the issue of ownership is not in dispute as the Petitioner has annexed copies of Gazette Notices, Confirmation of Grant, Search, Court Orders among others. The Gazette Notices are published by the 2nd Respondent who expressed the intention to 1st Respondent to acquire a portion measuring 0.3413 acres out of the suit property.
6. This Court then asks the question what is the issue in dispute to be resolved and does this Court have original jurisdiction to determine the said dispute? From the Petition, the suit property appears to have been compulsorily acquired by the 1st & 2nd Respondents for the construction of the James Gichuru Junction – (Rironi Junction Road) and shown by a copy of the Kenya Gazette Notices annexed as JM 3) in the Petition and Petitioner’s Affidavit in support of the application. In paragraph 8 of the Petition, the Petitioner pleaded “The Petitioners thereafter and after ascertaining that the amount proposed as compensation accepted the offer and returned the duly executed Award Acceptance Form to the 2nd Respondent and duly advised the said 2nd Respondent of how the amount due was to be paid and to which bank account (s) (Annexure “JM 4”). The Petitioners contend that up to this time, they had been assured and guaranteed by the 2nd Respondent that they (2nd Respondent) had been facilitated with the requisite compensation funds by the 1st Respondent and that payment to them would be paid promptly once the compensation process was complete.”
7. At paragraph 14 the Petitioners stated; “..... the Petitioners were taken in circles on when payment of the award sum was to be paid. The Petitioner vide a letter dated 4th September 2023 (annexed and marked “JM-8” received a formal communication from the 2nd Respondent with an indication that no payment was forthcoming as payment had allegedly already been done but with no details of who was paid, amount paid, when it was paid how it was paid for what acquired portion of Limuru/ Kamirithu/755.”
8. Further in prayer (1) the Petitioner prays for a declaration that his rights under Article 40 (3) and 47 (1) of *the Constitution* have been violated and infringed by the Respondents in the manner pleaded in the Petition.
9. Article 40 (3) of *the Constitution* requires the state not to deprive a party of his property unless the deprivation:
 - a. results from an acquisition of land in accordance of Chapter Five or;
 - b. for public purposes or in the public interest and is carried out in accordance with this Constitution and any Act of Parliament. (emphasis added).
 - i. requires prompt compensation in full.
 - ii. allows any person who has an interest in or right over that property a right of access to to a Court of law.
10. Any Act of Parliament referred to in Article 40 (3) in this instant is the *Land Act* 2012. Since the Petitioners are not questioning the compulsory acquisition, in my opinion what I hold to be in dispute and which the Petitioners themselves admit as the issue is the just compensation payable to



him and which should be paid promptly. Therefore the question arising is about the payment of the compulsorily acquired portion which the Petitioners have not seen yet the Respondents insist that the Petitioners were paid.

11. The Petitioners are seeking proof from the Respondents of the said payment this is the gist of their Petition. Under the Land Act, Section 111 provides that compensation be paid promptly in full to all persons whose interests in the land have been determined. Section 112 provides the procedure of making that award.
12. Section 128 of the Land Act clearly states that any disputes' arising out of any matter provided for under this Act is to be referred to the Environment & Land Court. In the absence of steps a party may take where both the provisions of Article 40 (3) of the Constitution and Section 112 has not been undertaken I find nothing wrong to invoke the original jurisdiction of this Court.
13. The second limb of the objection is that the claim should not have been commenced as a Constitutional Petition. As already mentioned above, the right the Petitioner is trying to enforce is given to him both by the Constitution under Article 40 and expanded under Part VIII of the Land Act 2012. The argument that there is no constitutional right which has been infringed is not true. In terms of not getting an opportunity to ventilate their claim is neither here nor there as the Respondents have a right to file any response they may wish to just like if this suit was commenced by way of a Plaint. The Petition can proceed to be heard in the normal manner as an ordinary suit. This in my view is a technical objection the Respondents are trying to use to deny a party the protection of this Court for which he is entitled to.
14. For these reasons I find the claim as pleaded is proper and this Court in exercise of its original jurisdiction has powers to determine the dispute as provided under Section 28 of the Land Act. Consequently, I find no merit on both limbs of the objection. The Preliminary Objections dated 14/01/2025 and 5/02/2025 are hereby dismissed with costs to the Petitioner.
15. Further Orders the parties are directed to go for Pre-trial Conference on 22/05/2025 since I see their choice of hearing the Petition is viva voce.

DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA THIS 7TH DAY OF APRIL 2025 VIA MICROSOFT TEAMS.

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MOGENI J

JUDGE

In the presence of:

Ms. Wambua for the 1st and 2nd Petitioners

Mr. Muganda for the 1st Respondent

2nd Respondent – Absent

Mr. Melita – Court Assistant

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MOGENI J

JUDGE

