



REPUBLIC OF KENYA



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Ojwang v National Irrigation Authority & another (Environment & Land Case E010 of 2022) [2025] KEELC 217 (KLR) (24 January 2025) (Judgment)

Neutral citation: [2025] KEELC 217 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT SIAYA
ENVIRONMENT & LAND CASE E010 OF 2022
AY KOROSS, J
JANUARY 24, 2025

BETWEEN

JOHN SIRADUK OJWANG PLAINTIFF

AND

NATIONAL IRRIGATION AUTHORITY 1ST DEFENDANT

NATIONAL LAND COMMISSION 2ND DEFENDANT

JUDGMENT

Background of the case

1. It is paramount to contextualise the background of the matter herein. The plaintiff is the private land owner of land parcel no. Siaya/Nyadorera B/1976 (suit property) that is allegedly being compulsorily acquired for public use.
2. As envisaged by Section 107 of the *Land Act*, the acquiring body is the Ministry of Water, Sanitation and Irrigation (acquiring body). This national government entity has not been joined in the proceedings.
3. In the plaint, the 1st defendant is described as a creature of the *Irrigation Act* whose mandate is to develop, manage, and regulate irrigation activities. As per Section 7 thereof, it is a corporate body with perpetual succession and a common seal, and in its corporate name, it is capable of suing and being sued.
4. The 2nd defendant is established under Article 67 of *the Constitution* of Kenya. In the context of this case, it manages the process of acquiring private land for public use on behalf of the national or county government. Once acquired, the private land becomes public land.



5. The case that is the subject of this judgment was filed close to a year before the operationalisation of the Land Acquisition Tribunal and this court did not deem it necessary to transfer it for hearing and determination by this legal entity.

Plaintiff's case

6. In a plaint dated 5/10/2022 filed by the law firm of M/s. P.C. Onduso & Co. Advocates, the plaintiff contended vide gazette notice no. 4537 dated 17/09/2021, the 1st defendant caused to be published an intention to undertake inquiries on behalf of the acquiring body.
7. According to him, the project was known as Lower Nzoia Irrigation and Flood Mitigation Development Project Phase 1, which sought to, among other things, compulsory acquire the suit property.
8. According to him, on diverse dates of 10/06/2021 and 11/03/2022, the defendants without notice and involvement or input of the plaintiff, visited the suit property for purposes of conducting a survey inspection.
9. He asserted that thereafter, the defendants prepared a report recommending compensation of eligible assets in the suit property or a rerouting of the project that traversed the suit property and its de-gazettement together with that of Siaya/Nyadorera B/1975 (1975).
10. Further, he asserted despite these recommendations, the defendants had not acted upon them. He contended the defendants' engagements fell short of the Environmental and Social Standards (ESS), and Project Management Unit's (PMU) recommendations.
11. Additionally, he stated the defendants had failed to gazette an Environmental Impact Assessment (EIA) report, set up a technical advisory committee, hold proper public hearings and lastly, render a determination within 3 months.
12. Thus, he contended he was entitled to be given a copy of the EIA report by PMU, an assessment of compensation for resettlement, fair administrative action and being given a copy of the full status report. Consequently, he sought the following reliefs from this court: -
 - a. A declaration the defendants violated the plaintiff's rights under Articles 27 and 47 of *the Constitution* on the right of equal benefit of the law and fair administrative action.
 - b. A declaration the project which traverses the plaintiff's homestead violated the plaintiff's environmental, social and cultural rights.
 - c. A declaration the project which traverses the plaintiff's homestead violated ESS1 on assessment, management and monitoring of environmental and social impacts on the plaintiff.
 - d. A declaration the project violated the plaintiff's right to health, safety, security, involuntary resettlement and cultural heritage.
 - e. A declaration the defendants violated the effective engagement of stakeholders in project design and implementation.
 - f. By ESS5A, a mandatory injunction be issued compelling the defendants to place the plaintiff under resettlement for permanently displaced persons.
 - g. The defendants be directed to assess the entire compound, and structures and promptly compensate the plaintiff.



- h. An award of general damages for violation of the right to fair administrative action, pain, suffering and distress be granted.
- i. An award of exemplary damages for loss of opportunity to develop the homestead, anxiety and mental anguish be granted.
- j. Costs of the suit.
- k. Any other relief that this Hon. Court may deem fit to grant.

1st defendant's case

- 13. The 1st defendant who was represented by the law firm of J.O. Juma & Co. Advocates filed a defence dated 1/12/2022 in which it stated it was a stranger to the assertions made in the plaint, denied the allegations made against it and put the plaintiff to strict proof. It urged the court to dismiss the suit with costs.

2nd defendant's case

- 14. By counsel M/s. Caroline Khasoa, the 2nd defendant filed a defence dated 20/12/2022. It was mostly composed of denials and put the plaintiff to strict proof.
- 15. Additionally, and without prejudice, it asserted it complied with all statutory requirements in the acquisition of the suit property.
- 16. It stated on 5/03/2021, it published a notice to acquire 0.0212 ha of the suit property and by Section 107 (5) of the *Land Act* (LA), public sensitization took place and distribution of gazette notice no. 2179 of 5/03/2021 was done and it was collected by the plaintiff's relative Erick Omondi Ouma.
- 17. It was contended on 10/06/2021, a ground inspection was undertaken and affected assets were documented and photographed.
- 18. It was averred all these took place in the presence of its valuers, and that of the local Grievance Resolution Committee members (GRC), family representatives who included the plaintiff's wife, Geomatic Surveyors who were the project surveyors, Southern Delta International who were the World Bank project consultants, acquiring body, the 1st defendant and public.
- 19. It was asserted on completion of the exercise and by Section 112 of the LA, on 17/09/2021 it caused to be published vide gazette notices no 9851 and 9852 inquiries on the suit property- this was allegedly conducted on 28/10/2021.
- 20. Thereafter, it contended it carried out a computation of sums for compensation and on completion of valuation, a total of 2009 awards were made to the project affected persons (PAP) amongst them being the plaintiff.
- 21. It asserted in the project, it worked with all relevant stakeholders including the National Environmental Management Authority (NEMA) to ensure all environmental and social standards were met.
- 22. Additionally, it stated it complied with the PMU recommendations and has made appropriate and adequate compensation which was in tandem with the inspection of June 2021 and 28/10/2021 and that it had always been in open communication with the plaintiff.
- 23. It asserted the plaintiff was not entitled to the reliefs sought and urged the court to dismiss the plaintiff's suit with costs.



Issues for determination

24. The plaintiff filed his issues dated 16/05/2023 and from the evidence, the following issues commend themselves for determination: -
- a. Whether the 1st defendant was a necessary party to the proceedings.
 - b. Whether the site visit report by the Deputy Registrar of 7/06/2024 was properly conducted.
 - c. Whether the process of compulsory acquiring a portion of the suit property complied with statutory requirements.
 - d. What orders should this court issue including an order as to costs?

Plaintiff's evidence

25. The plaintiff testified as PW1 and adopted his witness statement as his evidence in chief and produced documents in support of his case which were marked as Pex.1-6.
26. It was his testimony by gazette notices no. 12525 of 2017 and 8594 of 2020, the defendants notified the public of their intention to acquire parcels of land including the suit property. He stated since they were public notices, he was aware of them.
27. That on 10/06/2021 which was after the notice, the defendants without notice and with strangers discussed compensation. He averred that since his input was not sought, he protested by instructing his erstwhile advocates to write a letter to the GRC. This letter was produced as Pex. 2.
28. However, as he was not formally represented by a family member, he stated he protested the activities that were carried out under gazette notice no. 2179 of 5/03/2021 and gazette notice no. 9852 of 17/09/2021.
29. Subsequently, by gazette notice no. 4537 of 17/09/2021 (Pex.3), an inquiry on behalf of the acquiring body was published and the exercise was to be conducted on 28/10/2021. This notwithstanding, an inquiry was never conducted hence the numerous correspondence that he produced as Pex. 4 and 6.
30. According to him, eventually on 11/03/2022, an inquiry was conducted which took place in the presence of his erstwhile counsel, family representative, EIA expert, PMU, GRC and 2nd defendant.
31. It was his position the PMU made recommendations either for compensation of all assets within the homestead and resettlement or realigning the canal to avoid the suit property and 1975. The latter option would remove the suit property and 1975 from the list of properties to be acquired. Nonetheless, the 2nd defendant resisted PMU's recommendations.
32. He contended it was 2 years since the publication of the intended acquisition with no end in sight, the defendants had cut off communication with him and his life had been put in limbo. It was his view the acquisition process had denied him an opportunity to complete his various constructions.
33. He stated the gazette notices never mentioned the 1st defendant and later clarified that his parents were present during the site visiting activities, an enquiry was conducted in 2021 and that his main grievance was the absence of communication.
34. He asserted that PMU was not part of the 2nd defendant and that his grievance should never have been directed to this entity. Further, that an award has never been made to him and that he just heard rumours that part of his homestead will not be considered for compensation.



1st defendant's evidence

35. The 1st defendant's evidence was led by Eng. Stephen Mutinda who was a senior irrigation engineer. He testified as DW1 and it was his evidence the case did not disclose a reasonable cause of action against the 1st defendant and no reliefs were sought against it. Therefore, it should be struck out.
36. He stated the 1st defendant was one of the departments of the acquiring body and it was only after the project was completed, that it could be handed over to it by the acquiring body.
37. Further, he averred the EIA report and design report had long been prepared by the acquiring body and he did not know if the 1st defendant was consulted.

2nd defendant's evidence

38. Despite service, filing a defence, and witness statement by Peter Kaunda, the 2nd defendant it did not call any witness and thus, its defence remained mere allegations that were unsubstantiated by evidence.

Parties' submissions

39. As directed by the court, all parties except the 2nd defendant filed written submissions. The plaintiffs' submissions dated 18/11/2024 identified 3 consolidated issues for resolution which were whether the 1st defendant is a necessary party to the suit, whether the defendants complied with the ESS and whether the plaintiff is entitled to the reliefs sought.
40. The 1st defendant's submissions recognised the following 4 consolidated issues for determination; whether the acquisition of the suit property was carried out per the law, whether the 4 compensation awards were full and just compensation, whether the 1st defendant is a necessary party and whether the plaintiff is entitled to the reliefs sought.
41. The issues for determination were identified earlier in the judgment. As this court proceeds with its analysis and determination, it shall consider the respective counsels' arguments on the particular issue and also consider provisions of law and authorities they relied upon to advance their arguments.
42. The court will also consider the pleadings and evidence of the plaintiff and 1st defendant.

Analysis, and Determination

43. The issues that were earlier identified as arising for resolution shall be dealt with shortly in a consecutive manner.

a. Whether the 1st defendant was a necessary party to the proceedings.

44. In civil proceedings, the joinder of parties is governed by Order 1 Rule 10 (2) of the Civil Procedure Rules (CPR). This provision of law provides: -

“The court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all questions involved in the suit, be added.”



45. The Supreme Court of Kenya in *Communications Commission of Kenya, Attorney General & Anor. v Royal Media Services Limited & Others Nation Media Services Limited, Standard Media Group Limited, Consumer Federation of Kenya (COFEK), Star Times Media Limited, Pan African Network Group Kenya Limited, GOTV Kenya Limited & West Media Limited* [2014] KESC 52 (KLR) cited with approval the persuasive decision of *Meme v. Republic* [2004] 1 EA 124 where the necessity of parties in court proceedings was expounded as follows: -
- “ (i) Joinder of a person because his presence will result in the complete settlement of all the questions involved in the proceedings;
- (ii) joinder to provide protection for the rights of a party who would otherwise be adversely affected in law;
- (iii) joinder to prevent a likely course of proliferated litigation.”
46. The 1st defendant was joined to this matter and when it sought to be struck out as a party, this court reserved the matter for judgment and particularly so, to establish its relationship with the acquiring body.
47. The plaintiff's counsel contends the 1st defendant is a necessary party since it will be an end user of the project whilst the 1st defendant's counsel relies on the decision of *Virenda Ramji Gudka, Advance Ventures Limited, Western Kenya Limited & Aarem Limited v Attorney General (on Behalf of Ministry of Roads and Chief Engineer, Roads)* [2014] KEHC 7612 (KLR) which held compulsory acquisition is governed by specific provisions of the LA.
48. According to the 1st defendant's counsel, these specific provisions particularly Sections 111 and 111 (1A) of the LA show engagements on the compulsory acquisition are usually between the acquiring body and the 2nd defendant.
49. Although I agree with the plaintiff's counsel that it emerged during the hearing that the 1st defendant was the end user or beneficiary of the project, it was not disputed it was not the acquiring body.
50. The argument of the 1st defendant's counsel that the joinder of the 1st defendant to the proceedings should be looked at from the prism of the LA in my humble view is proper.
51. Both counsels' arguments are valid. But in the context of this case, the proper assessment of the joinder of the 1st defendant to the proceedings should be anchored on the LA.
52. This position is not new and has its footing in the recent Court of Appeal decision of *Five Star Agencies Limited & another v National Land Commission & 2 others* [2024] KECA 439 (KLR) which stated:-
- “The question whether KENHA was a necessary party can only, in our view, be answered by examining the role each party was to play in the acquisition of the suit property.”
53. A scrutiny of the LA particularly Sections 107 which deals with the acquisition, 107A on an assessment of the value of the land being acquired, 109 on prompt payment in full, 110 (2) in offering the original owners or their successors in title pre-emptive rights to re-acquire the land in the event of a failed acquisition, 112 on inquiry to compensation, 113 on awarding the compensation and 120 on taking possession upon granting an award all demonstrate the 2nd defendant is the main player in land acquisition process.
54. If truth be told, the acquiring body's role is very minimal. By Section 107 its role is restricted to notifying the 2nd defendant of its intention to acquire some particular land under Section 110.



55. Further, under Section 111 (1A) its mandate is to deposit the compensation funds and survey fees, registration fees, and any other costs with the 2nd defendant.
56. The respective roles of the 2nd defendant and acquiring body were well summarized by Five Star Agencies Limited (Supra) in the following manner: -

“ 107. Under section 107 of the *Land Act*, it is the mandate of the Commission (read the NLC) to acquire land for a public purpose and it is also obligated with the coming up of a criteria and guidelines to be adhered to by the acquiring authorities in the acquisition of land. The role of an acquiring authority under section 107 is restricted to notifying the NLC of its intention to acquire some particular land under section 110. Similarly, under the provisions of section 107A and 107B of the said Act, the criteria for assessing the value of the compulsorily acquired land is a preserve of the NLC. The next identified role of an acquiring authority is to be found in section 111 which relates to compensation for compulsorily acquired land. The said section provides that:

111. Compensation to be paid

- (1) If land is acquired compulsorily under this Act, just compensation shall be paid promptly in full to all persons whose interests in the land have been determined.
- (1A) The acquiring authority shall deposit with the Commission the compensation funds in addition to survey fees, registration fees, and any other costs before the acquisition is undertaken.”[Emphasis added]

108. Section 112 on the other hand provides for the process known as an inquiry, wherein the NLC hears issues of propriety and claims for compensation by persons interested in the land that is the subject of the compulsory acquisition. If an acquiring authority has any issues of propriety and claims regarding the anticipated compensation, it will be heard at this stage. Indeed, section 112 (6) provides that:

“The public body for whose purposes the land is being acquired, and every person interested in the land, is entitled to be heard, to produce evidence and to call and to question witnesses at an inquiry.” [Emphasis added]

109. After the inquiry is concluded, the NLC prepares the written award pursuant to section 113 and serves upon each person it has determined to be interested in the land, a notice of the award and offer of compensation as provided under section 114 of the said Act. After notice of an award has been served on all the persons determined to be interested in the land, the NLC is required, pursuant to the provisions of section 115, to promptly pay compensation in accordance with the award to the persons entitled thereunder. However, in instances such as when the person entitled does not consent to receive the amount awarded, the NLC may at any time pay the amount of the compensation into a special compensation account held by the NLC such as the one held with NBK.



Pursuant to the provisions of section 120 (4), upon taking possession and payment of just compensation in full, the compulsorily acquired land vests in the national or county governments absolutely free from encumbrances.

110. From the aforesaid provisions of the *Kenya Roads Act* and the *Land Act*, the involvement of the acquiring authority in the acquisition process is, in our view, limited to notifying the NLC of its intention to acquire some particular land under section 110, depositing with the NLC the compensation funds in addition to survey fees, registration fees, and any other costs before the acquisition is undertaken, and participation in the inquiry, wherein any issues of propriety and claims for compensation by persons interested in the land subject of compulsory acquisition are heard.
111. We agree with the findings of the trial court that KENHA did not demonstrate that it had any reservations with the suit property being acquired by the NLC on its behalf. Any such reservations as rightly held by the trial court ought to have been raised at the inquiry stage, which was conducted pursuant to the provisions of section 113 of the Act. Similarly, despite being aware of the entire acquisition process, including the inquiry, KENHA did not comply with the provisions of section 111 (1A) of the said Act requiring it to deposit the compensation funds with the NLC.
112. Therefore, it is clear to us that KENHA was obligated in law to deposit the compensation funds with the NLC, and that it is the NLC which is mandated in law to conduct compulsory acquisition on behalf of the acquiring authority with the latter's participation in the entire process being as limited to the activities highlighted hereinabove. The NLC having acquired the suit property on behalf of KENHA pursuant to the relevant provisions of the law, then it was correct for the trial court to hold that Five Star did not have any claim against KENHA as compensation was being paid to it by the NLC pursuant to the provisions of section 115 from the funds deposited with the latter pursuant to the provisions of section 111 (1A) of the *Land Act*."

57. The LA does not mention any role that a beneficiary of a compulsory acquisition plays. I must agree with the 1st defendant's counsel and find that the involvement of the 1st defendant in the proceedings was unnecessary.
58. No relief was sought against it nor was its presence necessary for this court to effectively and completely adjudicate the issues before the court. I find the 1st defendant was improperly joined to these proceedings.

b. Whether the site visit report by the Deputy Registrar of 7/06/2024 was properly conducted.

59. Order 18 Rule 11 of the Civil Procedure Rules empowers courts to conduct site visits. This provision of law states as follows: -

“The court may at any stage of a suit inspect any property or thing concerning which any question may arise.”
60. The Court of Appeal decision of *Sojanm Springfields Limited v Githinji & 4 others* [2024] KECA 953 (KLR) adopted site visit principles that were established by the Tanzania Court of Appeal in



Kimonidimitri Mantheakis v Ally Azim Dewji & others (Civil Appeal No 4 of 2018) [2021] TZCA 663 (3 November 2021)(Korosso, Kwariko, Mugasha, JJ.A.) which consolidated the guiding principles thus:-

“In the light of the cited decisions, for the visit of the locus in quo to be meaningful, it is instructive for the trial Judge or Magistrate to: one, ensure that all parties, their witnesses, and advocates (if any) are present. Two, allow the parties and their witnesses to adduce evidence on oath at the locus in quo; three, allow cross-examination by either party, or his counsel, four, record all the proceedings at the locus in quo; and five record any observation, view, opinion or conclusion of the court including drawing a sketch plan if necessary which must be made known to the parties and advocates, if any.”

61. From the record, it is apparent during the site visit, counsels for the parties were present together with some of their clients’ representatives. The purpose of the visit was disclosed which was for the court to make observations on the impact of the project on the suit land.
62. The site visit took place after the plaintiff had closed his case and there was neither adduction of evidence during the site visit nor was a hearing ever conducted.
63. Being guided by the Court of Appeal decision of Kenya Bureau of Standards v Kwale International Sugar Company Limited & 4 others [2022] KECA 937 (KLR), I must find that the site visit was tainted with unfairness and prejudice and is hereby nullified.

b. Whether the process of compulsory acquiring a portion of the suit property complied with statutory requirements.

64. The plaintiff’s case introduced 2 limbs on matters of law; provisions of the LA and the environment. This judgment will deal with 1st limb of the LA and later on, deal with the 2nd limb of the dispute on environment.
65. Since the taking of a person’s property against his will is a serious invasion of his proprietary rights, Article 40 of *the Constitution* outlines private land rights vis a vis the doctrine of eminent domain. This provision of law states: -

- “(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.
- (4) Provision may be made for compensation to be paid to occupants in good faith of land acquired under clause (3) who may not hold title to the land.
- (5) The State shall support, promote and protect the intellectual property rights of the people of Kenya.
- (6) The rights under this Article do not extend to any property that has been found to have been unlawfully acquired.”

66. A reading of this provision of the law chiefly Article 40 (3) shows compliance with Chapter V of *the Constitution* and public use requirements are strict limitations upon the power of the government to take over private property.
67. As earlier stated the legal framework for compulsory acquisition is elaborately covered by Part VIII of the LA.
68. Although I agree with the 1st defendant’s counsel that the process of compulsory acquisition was elaborated by the decision of Patrick Musimba v National Land Commission, Kenya Railways Corporation, National Environment Management Authority, Attorney General & China Bridge and Construction Company [2016] KEHC 5956 (KLR), the law has since been amended resting with changes made by the Land Value (Amendment) *Act, 2019 No. 15 of 2019* that commenced on 19/08/2019.
69. While bearing in mind the amendments and summary of the procedures outlined in Patrick Musimba (Supra), in my humble view, it is pertinent to highlight the key steps in compulsory acquisition as envisaged in the LA. In doing so, I will highlight whether these steps were followed in this particular case and whether the plaintiff tendered evidence to substantiate his allegations.
70. Now, turning to our laws, Under Section 107 of the LA, the 2nd defendant is ordinarily prompted by the national or county government through the Cabinet Secretary or County Executive member respectively. The land must be acquired for a public purpose or in public interest as dictated by Article 40(3) of *the Constitution*.
71. Once satisfied the land sought to be acquired has met the criteria and guidelines of Article 40(3) of *the Constitution*, the 2nd defendant proceeds to cause the affected land to be mapped out and valued and establish if the acquiring body has identified the interests of the persons in occupation. The plaintiff did not contest the legal process upto this point.



72. Thereafter, under Section 107 (5) and upon approval of the acquisition, the 2nd defendant is required to publish gazette notices which make disclosures of the purpose for which the land is to be compulsorily acquired; the location, general description and approximate area of the land to be acquired.
73. In his testimony, the plaintiff testified that these processes were followed and though he did not produce the gazette notices for this court to appreciate its contents, he asserted it was conducted through gazette notice nos. 12525 of 2017 and 8594 of 2020.
74. Under Section 108, the 2nd defendant may inspect the land and do all things as may be necessary to ascertain whether the land is suitable for the intended purpose. Under Section 109, any damage caused by such entry is compensable. The plaintiff was silent on these laws and this court concludes they were adhered to.
75. As held in the decision Patrick Musimba (Supra) the foregoing process including that envisaged under Section 110 constitutes the preliminary or pre-inquiry stage of the acquisition.
76. After the preliminary stage, the next stage is set out in Section 112. It is where the land owners and those with proprietary interests, are usually directly involved for purposes of determining various interests and compensation.
77. From the evidence, the land acquisition process of the suit property did not proceed beyond this stage and one of the plaintiff's main grievances is how this particular stage was conducted and why it did not move to the next stage of an award for compensation as laid out in Section 113.
78. By Section 112, the gazette notice envisaged therein is also served on all landowners and those with interests in it and is typically done at least 15 days before the hearing. By it, the 2nd defendant issues an inquiry date where hearings are conducted.
79. In this case, the plaintiff produced as Pex.3 the gazette notice no. 9852 which shows it was issued in accordance with the law. In it, a hearing date of 26/10/2021 at Lugare Chief's camp was issued.
80. Nevertheless, the plaintiff testified that other inquiries were published in gazette notice nos. 4537 and 2179 but this line of evidence was unsubstantiated by documentary evidence.
81. At the hearing and as provided for by Section 112 (3) of the Land Act, the 2nd defendant is required to make a full inquiry into and determine who the persons interested in the land are and receive written claims of compensation from interested land owners and in this case the plaintiff and or other persons with interest in the land.
82. The plaintiff asserts the hearing has never taken place despite the gazette notice no. 9852. During cross-examination, he testified his main grievance was the failure of communication from the defendants.
83. However, the plaintiff's email of 11/01/2022 displays that indeed, a hearing took place and it is uncertain if it took place on 26/10/2021 or any other date. This email, which is addressed to Mr. Sakwa of GRC states thus in paragraph 1:-
- “You will organise another round of site visit/inquiry/assessment to the above mentioned parcels of land...” Emphasis added.
84. Indeed, this request was indulged by the 2nd defendant and other stakeholders and a 2nd visit was conducted on 11/03/2022. It appears a fresh inquiry was done. However, as evidenced by a series of emails, the outcome of this hearing did not augur well with the plaintiff and other persons with proprietary interests over the suit property.



85. The confirmation of the existence of an earlier inquiry was also substantiated by an email by the plaintiff's relative Paul Ongoma (Paul) dated 13/03/2022 to Mr. Kaunda who is an employee of the 2nd defendant.
86. This email was in response to an email from Mr. Kaunda after the meeting on 11/03/2022. This email by Paul stated: -
- “In addition to that, we contested the findings of your earlier visit, yet your (sic) ready to use the same findings to offer compensation?”
87. An email by the plaintiff to Mr. Kaunda dated 13/03/2022 told him to refrain from proceeding with any actions based on the erroneous report that you have attached and that any action contrary to the email will be deemed as an act of further aggression.
88. In an email dated 14/03/2022, Mr Kaunda stated the turn of events was unfortunate and the 2nd respondent's records were usually documented and highlighted some of the processes it usually undertakes and asserted for now, we would like to let the acquiring body to give guidance on the matter taking into account the laws that govern compulsory acquisition into account and the requirement of having a “cutoff” period set out by the relevant intention gazette notice. We request we let it rest there.
89. In an email dated 24/05/2022, the plaintiff wrote to Mr. Kaunda protesting another visit that took place on the suit property on an undisclosed date but this did not elicit any response.
90. As can be seen from these emails, compulsory acquisition causes fear and trepidation and this is caused by distress over resettlement, separation from family members, anxiety over the general effects of the acquisition or interference with sentimental value that one places over land. This is what makes matters related to land emotive.
91. Nevertheless, I do not entertain in my mind that the 2nd defendant followed due process towards the acquisition of the suit property. I find the 2nd defendant did not breach the provisions of the LA.
92. I will now turn to the 2nd limb which is on the environment and alleged breach of the ESS and EIA. Although DW1 testified that EIA usually takes place long before the preliminary stage of the land acquisition process kicks off, this evidence was not substantiated.
93. Be that as it may, a plain reading of Sections 58 and 63 of the *Environmental Management and Co-ordination Act* (EMCA) which outlines safeguards to be observed when a person or the state initiates any physical development, demonstrates the EIA Study, preparation of EIA study report, its circulation to the affected persons including the plaintiff and issuance of EIA license are carried out by the project proponent and NEMA.
94. None of the defendants are the project proponents nor do they issue EIA licenses and it follows no causes of action could be laid against them on breaches arising from noncompliance with environmental laws. The claims against them for breach of environmental laws are misplaced.
95. Even if I may be wrong, which I am not, the plaintiff testified the acquisition process breached what he described as ESS. It emerged from the expert report prepared by George Adhoch et al and produced as Pex.5 that ESS refers to the World Bank's Environmental Social Standards.
96. I am uncertain why the plaintiff made heavy weather on this ESS yet it is neither a hard nor soft law and suffice to say, it is unenforceable by a court of law in Kenya. Further, Kenya has a comprehensive legal framework on the environment.



97. Worse is, this report is unsigned by the alleged 3 experts, their respective professional qualifications were not disclosed and even if the report was produced, they were never called to testify.

98. Most of the plaintiff's grievances and reliefs sought were largely drawn from this report. The question that suffices is can the court rely on an unsigned expert report?

99. On this, I find the answer negative. This is so as the authors have not authenticated it and consequently, it lacks probative value. Concurrence on this is drawn from the persuasive decision of *Tumaz & Tumaz Enterprises Limited v Oliver Chapa Chonga & another* [2022] KEHC 13763 (KLR) where the learned judge stated:-

“An unsigned document cannot possibly be of any probative value, for what authenticates a document and gives it legitimacy is the signature. Execution of the document means that the person uttering it gives it ownership and reliability.”

100. Before I issue my final disposal orders, I must mention that even if the 2nd defendant has adhered to the plaintiff's request for non-communication, the LA did not leave him without a remedy for such non-communication.

101. By the plaintiff's admission, to the time of filing suit, 2 years had lapsed since the publication of the intended acquisition took place.

102. Section 111 LA 1(B) of the LA recognises that at times, delays may take place. So as not to inconvenience land owners such as the plaintiff, by operation of law, provisions have been made for the expiry of compulsory acquisition notices upon expiry of 24 months but subject to certain conditions. This proviso states: -

“Compensation for compulsorily acquired land may take any one or more of the following forms—

- (a) allocation of alternative parcel of land of equivalent value and comparable geographical location and land use to the land compulsorily acquired;
- (b) monetary payment either in lump sum or in instalments spread over a period of not more than one year;
- (c) issuance of government bond;
- (d) grant or transfer of development rights as may be prescribed;
- (e) equity shares in a government owned entity; or(f)any other lawful compensation

Provided that regardless of the form of compensation under this section, where an acquisition process is not completed within twenty-four months from the date of publication of the notice of intention to acquire the land, the acquisition shall lapse. Emphasis added.

103. In dealing with issue (d), It is my ultimate finding the plaintiff was unsuccessful in his claim. It is trite law costs follow the event and having considered the circumstances of this case, each party shall bear their respective costs. I hereby issue the following disposal orders: -

- a. The plaintiff's suit against the 1st defendant is hereby struck out.



- b. The plaintiff's suit against the 2nd defendant is hereby dismissed.
- c. Each party shall bear their respective costs of this suit.

It is so ordered.

DELIVERED AND DATED AT SIAYA THIS 24TH DAY OF JANUARY 2025.

HON. A. Y. KOROSS

JUDGE

24/01/2025

Judgment delivered virtually through Microsoft Teams Video

Conferencing Platform in the Presence of:

Mr. Onduso for the plaintiff

Mr. Gakuya for the 1st defendant

M/s. Harmony for the 2nd defendant

Court assistant: Mr. Ishmael Orwa.

