



**Republic v National Land Commission & another; Khodiyar Limited (Exparte) (Environment and Land Judicial Review Case E009 of 2023) [2025] KEELC 4027 (KLR) (26 May 2025) (Judgment)**

Neutral citation: [2025] KEELC 4027 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT AND LAND JUDICIAL REVIEW CASE E009 OF 2023**

**CA OCHIENG, J**

**MAY 26, 2025**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**NATIONAL LAND COMMISSION ..... 1<sup>ST</sup> RESPONDENT**

**KENYA RAILWAYS CORPORATION ..... 2<sup>ND</sup> RESPONDENT**

**AND**

**KHODIYAR LIMITED ..... EXPARTE**

**JUDGMENT**

1. What is before Court for determination is the Ex parte Applicant's Notice of Motion Application dated the 15<sup>th</sup> December 2023 which is filed pursuant to leave granted by this court on the 13<sup>th</sup> December 2023. The Ex-parte Applicant seeks the following Orders:
  1. An order of mandamus do issue to direct and compel the 1<sup>st</sup> and 2<sup>nd</sup> Respondents jointly and severally to forthwith pay the Ex parte Applicant:
    - i. Kenya Shillings Thirty-Nine Million (ksh.39, 000,000/=) being the principal amount awarded for the acquisition of 0.004 Hectares of the parcel of land LR No. 20281.
    - ii. Kenya Shillings Thirty-Eight Million Five Hundred Thousand (Ksh.38, 500, 000/=) being the principal amount awarded for the acquisition of 0.027 Hectares of the parcel of land LR No.20281.
    - iii. Kenya Shillings One Million, Five Hundred and Sixty Four Thousand (Ksh.1,564,000/=) being the principal amount awarded for the developments in the parcel of LR No. 20821.



2. An order of mandamus do issue to direct and compel the 1<sup>st</sup> and 2<sup>nd</sup> Respondents jointly and severally to forthwith pay the Ex parte Applicant's interests on Kenya Shillings Thirty nine million (ksh.39,000,000/=), Kenya Shillings Thirty eight million five hundred thousand (kshs.38, 500,000) and Kenya Shillings One Million, Five Hundred and Sixty Four thousand (ksh.1, 564, 000/=) being the principal amounts awarded on acquisition of the suit property at court's rate and at the interest rate pursuant to Section 117 of the Land Act 2012 as from 26<sup>th</sup> January 2018.
  3. Costs of this application be in favour of the Ex parte Applicant.
2. The application is premised on grounds on the face of the Chamber Summons dated 14<sup>th</sup> November, 2023, Statutory Statement and the Verifying Affidavit of P.J Kakad, the Ex parte Applicant's Managing Director. He avers that the Ex parte Applicant is the registered owner of LR No. 20281. He asserts that vide gazette notices Nos. 5040 of 25<sup>th</sup> July 2014, 6205 of 5<sup>th</sup> September 2014, 7090 of 10<sup>th</sup> October 2024, 1180 & 1181 of 11<sup>th</sup> February 2015, 1991 of 27<sup>th</sup> March 2015, 7813 of 16<sup>th</sup> October 2025, 952 of 19<sup>th</sup> February 2016, 5486 of 15<sup>th</sup> July 2016, 7839 of 30<sup>th</sup> September 2016, 1226 of 10<sup>th</sup> February 2017, 8840 of 8<sup>th</sup> September 2017 and 11576 of 24<sup>th</sup> November 2017, the 1<sup>st</sup> Respondent published its intention to acquire 0.004 hectares of the suit land for construction of the Mombasa-Nairobi standard gauge railway and at the conclusion of inquiry, the suit land was valued at Kshs. 39 million which was awarded as compensation vide the Award Letter dated 26<sup>th</sup> January 2018.
  3. He avers that the 1<sup>st</sup> Respondent further gazetted 0.027 hectares of the suit land for compulsory acquisition and awarded the Ex parte Applicant compensation of Kshs.38,500,000/= and in another acquisition of the same parcel, it was awarded Kshs.1,564,000/= respectively. He states that the Ex parte Applicant vide its letter dated the 31<sup>st</sup> January 2018 furnished the 1<sup>st</sup> and 2<sup>nd</sup> Respondents with all the relevant documents and bank account details to enable them make prompt payment for compulsory acquisition of the suit land but despite these Awards, it has never been paid. He reiterates that the Respondents have violated the Ex parte Applicant's right to property.
  4. He reaffirms that if any amount of compensation is not paid as in this case, Section 117 (1) of the Land Act 2012 mandates the 1<sup>st</sup> Respondent to open a special account and pay interest on compensation awarded at the base lending rate set by the Central Bank of Kenya from the time of possession until payment in full.
  5. The application is opposed by the 1<sup>st</sup> Respondent vide the replying affidavit of its Director, Legal Affairs, Mr. Brian Ikol. He asserts that while the 1<sup>st</sup> Respondent is assigned the function of acquiring land on behalf of the National/County Government under Section 107 of the Land Act, Section 111 1 (A) of the said Act obligates the acquiring authority to deposit the compensation sum with the 1<sup>st</sup> Respondent for onward transmission to the Project Affected Persons. He claims that from the 1<sup>st</sup> Respondent's records, the 2<sup>nd</sup> Respondent, which is the acquiring authority has not availed to the 1<sup>st</sup> Respondent the money required to pay the Ex parte Applicant the compensation owed for the acquisition of the suit land thus its hands are tied, as it is unable to pay.
  6. The 2<sup>nd</sup> Respondent filed a replying affidavit sworn by Mr. Stanley Gitari, its Principal Legal Officer. He alleges that the 2<sup>nd</sup> Respondent duly disbursed compensation funds to the tune of Ksh. Thirty-Eight Billion, Eight Hundred and Fifty Million (ksh.38.85 billion) to the 1<sup>st</sup> Respondent for onward payment to Project Affected Persons pursuant to Section 107 of the Land Act, 2012. He explains that out of the Kshs.38.85 billion paid out, Ksh.12 billion was disbursed directly to Project Affected Persons under the instruction and supervision of the 1<sup>st</sup> Respondent and Kshs.26.8 billion has been disbursed to the 1<sup>st</sup> Respondent for onward disbursements to the Project Affected Persons.



7. He contends that the 2<sup>nd</sup> Respondent's role in the compensation process is limited to the provision of funds to the 1<sup>st</sup> Respondent, which bears the statutory duty to disburse compensation as per Sections 111 and 113 of the *Land Act*, 2012.
8. In its supplementary affidavit sworn by PJ Kakad, the Ex parte Applicant asserts that the orders sought should be granted as the 1<sup>st</sup> and 2<sup>nd</sup> Respondents have admitted that they compulsorily acquired the Ex parte Applicant's suit land and they owe it the sums as claimed.
9. The Application was canvassed by way of written submissions.

### Submissions

10. In its submissions, the Ex parte Applicant argues that an order of Mandamus should issue compelling the Respondents to pay it compensation claimed since they are under a public duty to satisfy its demand for compensation as provided under Article 40 (3) of *the Constitution*. Further, that the Respondents are also statutorily obligated under Sections 113 (1) and 115 (1) of the *Land Act* to award compensation and to promptly pay the same.
11. It further submits that compensation ought to have been prompt in accordance with Article 47 (1) of *the Constitution*. Further, that where compensation is not settled promptly, the Respondents are required to deposit it, in an interest earning account in accordance with Section 117 of the *Land Act*. It insists that the Ex parte Applicant is entitled to interest on each Award from the 26<sup>th</sup> January 2018, when the Respondents took possession of the Ex parte Applicant's property to date.
12. It further submits that the Ex parte Applicant demanded for performance, after it gave the Respondents a reasonable time to comply and there is no other adequate remedy available to it, save for the orders sought. To buttress its averments, the Ex parte Applicant relied on the following decisions: Republic v Kenya National Examinations Council ex parte Gathenji & Others [1997] eKLR, Republic v Principal Secretary, Ministry of Internal Security & Another Ex parte Schon Noorani & Another [2018] eKLR and Commissioner of Lands & Another v Coastal Aquaculture Limited [1997] eKLR.
13. On its part, the 1<sup>st</sup> Respondent submits that an order of Mandamus cannot be issued against it, to compel payment of compensation for compulsorily acquired land, since it has not received the necessary funds from the 2<sup>nd</sup> Respondent, which is the acquiring body as under Section 111(1A) of the *Land Act*, the acquiring entity is required to deposit compensation funds before acquisition arguing that the 1<sup>st</sup> Respondent lacks independent funding from government specifically meant to cater for compensation for the Project Affected Persons, whose parcels of land are acquired for various projects.
14. It submits that Mandamus only applies where a public body is legally and practically able to comply and, in this case, its hands are tied and it is unable to pay compensation.
15. It contends that unless the Ex Parte Applicant can prove that it has been furnished with the money and is simply refusing to pay the compensation, there is no basis for seeking an order of Mandamus against it, as such an order ought to be within its capability to obey or comply. To support its arguments, it relied on the case of Republic v. County Chief Officer, Finance & Economic Planning, Nairobi City County ex parte David Mugo Mwangi [2018] eKLR.
16. In its submissions, the 2<sup>nd</sup> Respondent emphasizes that its role in compulsory acquisition is limited to financing the process pursuant to Section 111 (1A) of the *Land Act*, which places an obligation on the acquiring body to deposit the requisite compensation funds with the 1<sup>st</sup> Respondent, before the completion of the acquisition.



17. It contends that it fully discharged its legal duty by providing the requested funds for compensation. Further, that an acquiring body cannot be held liable, where it has already met its obligation by depositing the funds with the 1<sup>st</sup> Respondent. It insists that upon receipt of funds, the 1<sup>st</sup> Respondent is mandated to disburse just compensation to the affected project owners.
18. To buttress its arguments, it relied on the following decisions: *Five Star Agencies Limited v National Land Commission & 2 Others Civil Appeal E290 & 328 of 2023* (Consolidated) [2024] KECA 439 (KLR), Republic v National Land Commission & 2 Others Ex –parte Samuel M.N Mweru & Others [2018] eKLR, Sparkle properties limited v National Land Commission & Another [2022] eKLR and Mwaura v Attorney General [2017] eKLR.

### **Analysis and Determination**

19. Upon consideration of the instant Notice of Motion application including the Statutory Statement, respective affidavits, annexures and rivalling submissions, the only issue for determination is whether the ex parte Applicant is entitled to orders of mandamus as sought.
20. The ex parte Applicant has sought for an order of Mandamus seeking to compel the Respondents to compensate it, for its various parcels of land, which were compulsorily acquired. It is the Ex Parte Applicant’s case that despite various portions of the suit land being compulsorily acquired and Award letters being issued, the Respondents are yet to compensate it, seven (7) years after the said Awards were made.
21. The 2<sup>nd</sup> Respondent contends that it disbursed funds to the 1<sup>st</sup> Respondent for settling monies owed to Project Affected Persons. The 1<sup>st</sup> Respondent denies being facilitated with monies for compensation and contends that the delay in payment of compensation is occasioned by the failure in the provision of the required funds by the 2<sup>nd</sup> Respondent.
22. *The Constitution* contemplates just compensation where land is compulsorily acquired. Article 40(3) of *the Constitution* provides that:
 

“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.”
23. While section 111 (i) of the *Land Act* provides as follows:
 

“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.”
24. Further, section 7 of the Fair Administrative Actions Act provides that any person who is aggrieved by an administrative action or decision may apply for review of the administrative action or decision to



— (a) a court in accordance with section 8; or (b) a tribunal in exercise of its jurisdiction conferred in that regard under any written law. Subsection (2) provides that a court or tribunal under subsection (1) may review an administrative action or decision on any of the grounds listed in the said section.

25. Further, Article 47 of *the Constitution* stipulates thus:

- “(1) Every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.
- (2) If a right or fundamental freedom of a person has been or is likely to be adversely affected by administrative action, the person has the right to be given written reasons for the action.
- (3) Parliament shall enact legislation to give effect to the rights in clause (1) and that legislation shall—
  - (a) provide for the review of administrative action by a court or, if appropriate, an independent and impartial tribunal; and
  - (b) promote efficient administration.”

26. Lord Diplock in the case of *Council for Civil Service Unions vs. Minister for Civil Service* [1985] A.C. 374, at 401D clearly set the standards of judicial review when he stated that:

“Judicial review has I think developed to a stage today when...one can conveniently classify under three heads the grounds upon which administrative action is subject to control by judicial review. The first ground I would call ‘illegality’, the second ‘irrationality’ and the third ‘procedural impropriety’...By ‘illegality’ as a ground for judicial review I mean that the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it...By ‘irrationality’ I mean what can now be succinctly referred to as “Wednesbury unreasonableness’...it applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it...I have described the third head as ‘procedural impropriety’ rather than failure to observe basic rules of natural justice or failure to act with procedural fairness towards the person who will be affected by the decision.”

27. In the case of *Republic vs. Kenya National Examinations Council ex parte Gathenji & 8 Others* Civil Appeal No. 234 of 1996, the Court of Appeal highlighted circumstances under which a party can seek an order of mandamus and provided inter alia:

“The order of mandamus is of most extensive remedial nature and is in form, a command issuing from the High Court of Justice, directed to any person, corporation or inferior tribunal, requiring him or them to do some particular thing therein specified which appertains to his or their office and is in the nature of a public duty. Its purpose is to remedy the defects of justice and accordingly it will issue, to the end that justice may be done, in all cases where there is a specific legal right and no specific legal remedy for enforcing that right and it may issue in cases where although there is an alternative legal remedy, yet that mode of redress is less convenient, beneficial and effectual or body of persons has failed to perform the duty to the detriment of a party who has a legal right to expect the duty to be performed.”



28. In Republic v Principal Secretary, Ministry of Internal Security & Another Ex-Parte Schon Noorani & Another [2018] KEHC 9433 (KLR), the court provided parameters for the writ of mandamus to issue as follows:

- “(i) There must be a public legal duty to act;
- (ii) The duty must be owed to the Applicants;
- (iii) There must be a clear right to the performance of that duty, meaning that:
  - a. The Applicants have satisfied all conditions precedent; and
  - b. There must have been:
    - I. A prior demand for performance;
    - II. A reasonable time to comply with the demand, unless there was outright refusal; and
    - III. An express refusal, or an implied refusal through unreasonable delay;
  - (iv) No other adequate remedy is available to the Applicants;
  - (v) The Order sought must be of some practical value or effect;
  - (vi) There is no equitable bar to the relief sought;
  - (vii) On a balance of convenience, mandamus should lie.”

29. From the respective affidavits, it is clear that the Respondents do not dispute compulsorily acquiring the Ex parte Applicant’s parcel of land. However, there is a tussle between them, as to who is liable to pay compensation.

30. On payment of compensation, section 125 of the *Land Act* provides that:

- “(1) The Commission shall, as soon as is practicable, before taking possession, pay full and just compensation to all persons interested in the land.
- (2) An acquiring authority shall pay the first offer of compensation to the interested parties before taking possession.”

31. In Republic v National Land Commission & 2 Others Ex-parte Samuel M. N. Mweru & 5 others [2018] KEHC 8021 (KLR), Odunga J (as he then was) held as follows;

“It therefore follows that before the Commission acquires land on behalf of any authority it must ensure that the funds required for the said acquisition are placed at the disposal of the Commission so that as soon as the process is completed but before possession of the land is taken the person interested in the land is fully compensated. Where the Commission fails to do so and the land is possessed by the acquiring authority before payment is made, the obligation to ensure payment is made falls squarely on the Commission. It falls that the



Commission cannot escape liability in such circumstances by simply contending that the acquiring authority has not availed the funds.”

32. While in *Mwangi & 33 Others (Petitioning on their Behalf and on Behalf of 106 Others) v National Land Commission & Another* [2024] KEELC 1076 (KLR), Omollo J opined that:

“The Liability on the part of the 1<sup>st</sup> Respondent is having acted on behalf of the acquiring authority, it must complete its mandate by facilitating the payment of the compensation. They cannot be removed from the web until the matter is concluded.”

33. On the issue of interest claimed, section 117(1) of the *Land Act* provides that:

“If the amount of any compensation awarded is not paid, the Commission shall on or before the taking of possession of the land, open a special account into which the Commission shall pay interest on the amount awarded at the rate prevailing bank rates from the time of taking possession until the time of payment.”

34. This provision is clear that interest rates shall only be applied to the principal amount awarded, at the prevailing bank rates, until the time of payment.

35. Based on the facts before me while relying on the legal provisions cited and associating myself with the decisions quoted, I opine that the Ex parte Applicant was entitled to just compensation once its property had been compulsorily acquired. In my view the orders of Mandamus sought are indeed valid since the Respondents have not denied compulsorily acquiring the Ex parte Applicant’s parcel of land and failing to compensate it. The only issue between the Respondents is who is entitled to pay the compensation. To my mind, this is not a concern for the Ex parte Applicant.

36. In the circumstances, I find that there was ‘irrationality’, ‘unreasonableness’ and procedural impropriety on the part of the Respondents for taking seven (7) years in paying just compensation to the Ex parte Applicant, for its land.

37. In the foregoing, I find the instant Notice of Motion application merited, will allow it and make the following final Orders:

- i. An order of mandamus be and is hereby issued directing and compelling the 1<sup>st</sup> and 2<sup>nd</sup> Respondents jointly and severally to forthwith pay the Ex parte Applicant:
  - a. Kenya Shillings Thirty-nine million (Kshs.39, 000,000/=) being the principal amount awarded for the acquisition of 0.004 Hectares of the parcel of land LR No.20281.
  - b. Kenya Shillings Thirty-Eight Million Five Hundred Thousand (Kshs.38,500,000/=) being the principal amount awarded for the acquisition of 0.027 Hectares of the parcel of land LR No. 20281.
  - c. Kenya Shillings One Million, Five Hundred and Sixty-Four Thousand (Kshs.1, 564, 000/=) being the principal amount awarded for the developments in the parcel of LR No. 20821.
- ii. An order of mandamus be and is hereby issued directing and compelling the 1<sup>st</sup> and 2<sup>nd</sup> Respondents jointly and severally to forthwith pay the Ex parte Applicant’s interests on Kenya Shillings Thirty-Nine Million (Kshs.39,000,000/=), Kenya Shillings Thirty-Eight Million Five Hundred Thousand (Kshs. 38, 500,000) and Kenya Shillings One Million, Five Hundred and Sixty-Four thousand (Kshs.1,564, 000/=) being the principal amounts awarded on acquisition



of the suit property at prevailing bank rate pursuant to Section 117 of the [Land Act](#) 2012 as from 26<sup>th</sup> January 2018 until the time of payment.

iii. Costs of this application is awarded to the Ex parte Applicant.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 26<sup>TH</sup> DAY OF MAY 2025**

**CHRISTINE OCHIENG**

**JUDGE**

In the presence of:

Stamili for 2<sup>nd</sup> Respondent

Anyango Opiyo for Applicant

Masinde for 1<sup>st</sup> Respondent

Court Assistant: Halima

