



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT MOMBASA

PETITION NO. 58 OF 2019

SHAMSUDIN KHOSLA..... 1ST PETITIONER

SHIRIN SHAMSHUDIN KHOSLA..... 2ND PETITIONER

HIGHWAY CARRIERS LIMITED.....3RD PETITIONER

AND

KENYA NATIONAL HIGHWAYS AUTHORITY...1ST RESPONDENT

NATIONAL LAND COMMISSION..... 2ND RESPONDENT

JUDGMENT

(Petitioners claiming to be owners of land earmarked for compulsory acquisition for construction of a road; petitioners contending that due process for compulsory acquisition not followed and that they have not been compensated; petitioners thus claiming inter alia a violation of their constitutional right to property; assessment of the evidence demonstrating that the due notices required for the acquisition of the suit properties was followed save that the respondents were yet to publish their award; respondents directed to make and report their award to the petitioners)

1. This petition was commenced on 20 December 2019. The 1st and 2nd petitioners are individuals, and state that they are the joint registered proprietors of the land parcels MN/VI/2552 (Plot No.2552 or the first property) and MN/VI/3820 (Plot No.3820 or the second property), whereas the 3rd petitioner, a limited liability company, avers to be the registered proprietor of the land parcel MN/VI/2920 (Plot No.2920 or the third property) (the three properties collectively referred to herein as “the suit properties”) which are situated in Changamwe, in Mombasa County. The developments therein include a commercial yard and a petrol station which are said to be leased to third parties; the yard, to Bahari Forwarders Limited, and the petrol station, to Petrocity Enterprises Kenya Limited. The petrol station is partly built on the Plot No. 2552 and Plot No. 2920.

2. The Government of Kenya, through the respondents, intended to acquire various parcels of land for the dualling of the Mombasa-Mariakani Road. It is pleaded that through a notice published in the Daily Nation and The Standard newspapers of 3 August 2015, the 1st respondent (Kenya National Highways Authority), invited the public in general, and specifically the petitioners, to a sensitization meeting on 12 August 2015, at Changamwe Catholic Church Hall. It is pleaded that through a Kenya Gazette Notice No. 9343 of 18 December 2015, the 2nd respondent (the National Land Commission), published a notice of intention to acquire the suit properties, but the petitioners aver that the said notice did not include the name of the owners of the properties nor complete parcel numbers. In particular, the first property was only listed as MN/VI whereas the ownership details of the 1st and 3rd properties were missing. It is pleaded that on 6 April 2016, the 1st respondent’s appointed agent, Panafcon Limited (Panafcon), visited the properties and handed over a letter dated 15 March 2016 from the 1st respondent, indicating its intention to acquire land for the road. It is alleged that personnel from Panafcon only viewed the property and advised that surveyors would visit to mark the property. It is averred that on 3 May 2016, the petitioners sent an email to Panafcon, requesting for a marked survey plan, so that they may know the extent of the property sought to be acquired. It is said that Panafcon sent a layout plan which elicited a further request for a marked survey plan on 4 April 2016, but no response was received to this request.

3. It is pleaded that between 4 May 2016 and 25 May 2016, a representative from the 1st respondent’s survey office, gave the petitioners a copy of the acquisition map, indicating the suit properties as among those to be acquired, but the map was not accompanied by any forwarding letter. It is alleged that the said map also had discrepancies against the area gazetted for acquisition by the 2nd respondent, and further that the Plot No.2552 appeared to be part of a bigger parcel of land identified as Plot No. MN/VI/2842.

4. It is pleaded that through a Gazette Notice dated 17 February 2017, the 2nd respondent, gazetted the properties to be acquired, and invited

an inquiry for compensation to be held on 7 March 2017 at Changamwe Deputy Commissioner's Office. It is stated however, that the Plot No. 2552 was not among the properties listed in the said Gazette Notice.

5. A third Gazette Notice, No. 1945 of 3 March 2017, did not also list the Plot No. 2552, though it called for an inquiry to be held on 9 March 2017 at the Deputy Commissioner's Office at Changamwe .

6. The petitioners aver that they attended the inquiry held on 9 March 2017, and they were advised to present their title documents and bank details. The petitioners contend that they sought to know whether there was intention to acquire the Plot No. 2552 following its omission in the Gazette Notices. They were informed that the property was probably erroneously listed as Plot No. 2525 in the third Gazette Notice and were advised that this error would be rectified. The petitioners further aver that at the inquiry, no valuation was provided, nor a survey plan showing the area to be acquired, so that they may quantify the compensation due to them.

7. A fourth Gazette Notice, being Gazette Notice No. 5266 of 31 May 2018, now listed the Plot No. 2552 but the particulars of ownership were missing. The notice invited persons to a hearing at the Changamwe Deputy Commissioner's Office on 7 August 2019 and to deliver a claim for compensation to the 2nd respondent before that date. The petitioners state that they wrote to Panafcon, on 7 March 2019, and a reminder on 10 April 2019, seeking to be availed with a clear and marked survey plan showing what was intended to be acquired which letters were copied to the Director General of the 1st respondent, and the Chairman of the 2nd respondent. Panafcon replied and informed the petitioners that their assignment was completed in 2016 and directed the petitioners to the 1st respondent. The petitioners thus wrote to the 1st respondent on 15 April 2019, seeking to know the extent of the property to be acquired and the compensation payable, but no response was received, despite reminders being sent. The petitioners then wrote to the Chairman of the 2nd respondent on 22 October 2019, seeking the said information, but again no response was received. Meanwhile, the 1st respondent's employees, started demolishing structures about 15 – 20 metres from the suit properties.

8. The petitioners complain that they are yet to receive the information they have sought and fear, inter alia, that their right to property, under Article 40 of the Constitution, is under threat.

9. In this petition, the petitioners seek the following orders (slightly paraphrased for brevity) :-

(a) A declaration that the certificates of title that the Petitioners respectively hold in respect of the suit properties, constitute conclusive evidence that the petitioners are the absolute and indefeasible owners of the said properties.

(b) A declaration that any purported attempt of compulsory acquisition of the suit properties is invalid, null, unlawful and/or ultra vires the powers of the respondents.

(c) A permanent injunction to restrain the respondents from proceeding to compulsorily acquire or appropriate the suit properties.

(d) A permanent injunction to restrain the respondents from interfering with the petitioners' possession of the suit properties or demolishing their developments or part thereof.

(e) A permanent injunction to restrain the respondents from interfering with their quiet possession of the suit properties or hindering its business therein.

(f) An order awarding compensatory damages to the petitioners for breach of the petitioners' constitutional and statutory rights.

10. The supporting affidavit to the petition is sworn by Shamshudin Khosla, the 1st petitioner. He has more or less reiterated what is in the petition and he has annexed the documentation, including some survey documents relating to the Plot no. 2552, the Gazette Notices, and the various correspondences written to the respondents. There is also annexed a letter dated 25 May 2016 from the 2nd to the 1st respondent.

11. The 1st respondent filed a replying affidavit sworn by Daniel Mbuteti, a Senior Surveyor of the 1st respondent. He has deposed inter alia that under its mandate, the 1st respondent embarked on the dualling of the Mombasa-Mariakani Road (A109). On 3 August 2015, it published notices in the Daily Nation and Standard Newspapers inviting the public for a general sensitization meeting to be held on 12 August 2015 at Changamwe Catholic Church Hall. Subsequently, acting on instructions of the 1st respondent, the 2nd respondent published Gazette Notice No. 9343, in the Kenya Gazette of 18 December 2015, notifying the public of the Government's intention to acquire land for the subject project including the Plots No. 2552, 3028 and 2990. He has deposed that this Gazette Notice advised that plans of the affected land could be inspected in the offices of the 2nd respondent. He has stated that inadvertently, the notice did not include the complete parcel number for the Plot No. 2552 (instead listing it as MN/VI) and the name of the owners of the Plots No. 2920 and 3028. He deposed that consequently, and in order to rectify this anomaly, another Gazette Notice, being Notice No. 1388 of 17 February 2017, said to be a corrigenda, was published now showing the names of the owners of the Plot No. 2920 (being 3rd respondent) and Plot No. 3028 (being 1st and 2nd respondents). He has deposed that a further notice being Gazette Notice No. 5266 of 31 May 2018, said to be another corrigenda, was published so as to correct the anomaly in respect of the Plot No. 2552 vide which the said plot was corrected from MN/VI to MN/VI/2552. He has mentioned that the respondents afforded all persons, including the petitioners, an opportunity to have their claims heard at the Changamwe Deputy Commissioner's Office and that no prejudice was suffered on account of any inadvertent omissions. He has deposed that the 1st respondent did appoint Panafcon as its consultants, and that in response to a request for a survey plan made by the petitioners, Panafcon sent to the petitioners a layout map, depicting the extent of the portions to be compulsorily acquired as per the petitioner's request. He has stated that the other requests for survey plans could not be availed, as at the material time, the process of land acquisition was yet to be complete, and the final authenticated survey map from Survey of Kenya had not been amended, to show the remainder of the land parcel, and that this was duly communicated. He has stated that the 1st respondent is not the custodian of survey plans which are with the Director of Surveys, and further, that the issue of compensation rests with the 2nd respondent, following the Land Act, 2012, and not the 1st respondent.

12. The 2nd respondent filed a replying affidavit sworn by Fidelis K. Mburu, its Acting Director Valuation and Taxation. He has deposed that in line with its statutory mandate, the 2nd respondent compulsorily acquired various parcels of land on behalf of the 1st respondent for the subject road project. In compliance with the Land Act, 2012, it published the intention to acquire the suit properties vide Gazette Notice No. 1388 of 17 February 2017. A notice of inquiry was subsequently published through the Gazette Notice No. 1389 of 17 February 2017. He has deposed that the 2nd respondent then carried out a ground inspection for purposes of verification of the affected land and owners, recording the affected improvements for purposes of carrying out valuation in March 2017. He has averred that with regard to the suit properties, there were some errors in their description and that the same were rectified upon seeking a clarification from the 1st respondent through the letter dated 25 May 2016. He has deposed that the errors were eventually rectified vide Gazette Notice No. 5266 of 31 May 2018. He has deposed that the petitioners confirm that they attended the inquiry and accorded an opportunity to present their claim for compensation. He has stated that the petitioners voluntarily submitted their claim for compensation at the inquiry and they cannot now be heard to say that they did not have adequate information. He has averred that at the inquiry, the law does not require the 2nd respondent to provide the affected property owners with a valuation report as alleged by the petitioners. He has further mentioned that the petitioners concede that they were supplied with the layout map, Resettlement Action Plan, and the acquisition maps clearly indicating the extent of the area to be affected by the project, or the area to be compulsorily acquired, negating the need for survey plans. He has stated that the Gazette Notices indicate the acreage to be acquired negating the need for any further information which in any event is not necessary. He has deposed that the Director of Survey is the custodian of survey plans, and the petitioners can access these from the said offices, upon applying and paying the prescribed fees. He has averred that there is no allegation or proof that due process was not followed in the acquisition of the suit properties. He has argued that there is no reverse mechanism once property is compulsorily acquired and the only recourse is a right to compensation.

13. Counsel agreed that the petition be argued by way of written submissions and I have seen the submissions of counsel for the petitioner and the 1st respondent. Mr. Mbuthia, learned counsel for the 2nd respondent, relied on the submissions of Mr. Mbogo, learned counsel for the 1st respondent. I have taken note of these submissions before arriving at my decision. I now take the following position regarding this matter.

14. The petitioners allege various violations of their constitutional rights relating to the intention by the respondents to compulsorily acquire the suit properties. One of the issues raised by the petitioners is that the process of acquisition of the suit properties has not been followed whereas the respondents submit that the process was properly followed. It is here that I wish to start my analysis.

15. The suit properties, among others in the same vicinity, were being acquired for purposes of accommodating a road project. Both Mr. Kinuthia, learned counsel for the petitioners, and Mr. Mbogo, learned counsel for the 1st respondent, referred me to the Kenya Roads Act, Act No. 2 of 2007, particularly Section 23, and also to the Land Act, 2012. It is the Kenya Roads Act which establishes the 1st respondent and gives it the responsibility of management, development, rehabilitation and maintenance of national roads. Section 23 of the Road Act, provides as follows :-

23. Acquisition of land for the purposes of the Authority

(1) Where an Authority requires any land for its purposes under this Act, such Authority may either—

(a) if such land is not public land, acquire such land through negotiation and agreement with the registered owner thereof:

Provided that, notwithstanding the provisions of section 6 of the Land Control Act (Cap. 302), the ensuing transaction shall not require the consent of a land control board if the land to be acquired is agricultural land; or

(b) if such land is public land, or if the Authority is unable to acquire it by agreement in accordance with paragraph (a) of this subsection, notify the Minister responsible for Public Lands that the land specified in the notice is required for the purposes of the Authority.

(2) When notice has been given under subsection (1)(b), then—

(a) if the land is public land, the Minister responsible for Lands may, in his discretion and upon such terms and conditions as he may think fit, place such land at the disposal of the concerned Authority for its purposes; or

(b) if the land is not public land, the Commissioner of Lands may, if satisfied that it is in the public interest to do so, acquire the land in accordance with the provisions of the Land Acquisition Act (Cap. 295).

(3) Where land is acquired on behalf of an Authority under subsection (2), such Authority shall bear all costs in relation thereto.

(4) An Authority may at any time surrender any land surplus to both its existing and future requirements to the Minister responsible for Lands.

(5) The provisions of subsection (4) shall apply to land vested in the Authority by any written law, including this Act, as well as land conveyed to it or otherwise placed at its disposal.

(6) In this section—

“public land” means all public land in Kenya, excluding trust land, which is vested in the Government for the benefit of the public;

“trust land” means land which is or which was previously vested in a County Council by virtue of section 115 of the Constitution.

16. The Section above, certainly needs amendment, for the institutions and statutes referred to therein are those pre-2010 constitution. The office of the Commissioner of Lands does not currently exist, and so too, the Land Acquisition Act, which was repealed by the Land Act, 2012. The current law on acquisition is therefore in the Land Act, 2012, specifically in Part VIII of the said statute.

17. Under Section 107, the entity intending to acquire land submits a request for acquisition to the National Land Commission (the Commission). If the Commission accepts the acquisition, it shall, under Section 107 (4) (a) *“cause the land to be mapped out and valued”* following a valuation criteria in the statute. The Commission is then to publish a notice of approval of the request to acquire land (preliminary notice). There is subsequently supposed to follow an inquiry as to compensation (Section 112), which is supposed to be done at least 30 days after publication of the notice of intention to acquire land. The notice of inquiry is to be published in the Kenya Gazette or county Gazette at least 15 days before the inquiry. A copy of such notice is to be served upon every person who appears to be interested or claims to be interested in the land. Under Section 112 (2), the notice of inquiry shall call upon persons interested in the land to deliver a written claim of compensation, not later than the date of inquiry. At the hearing of the inquiry, the Commission receives written claims of compensation and has power to call for and hear witnesses. At Section 113, upon conclusion of the inquiry, the Commission is obligated to prepare a written award. This award is to be final and conclusive evidence of the size of land to be acquired, its value and the form of compensation payable. Under Section 114, the Commission is mandated to notify the persons of the award and offer of compensation. Once notice of the award is served, the Commission shall promptly pay compensation in accordance with the award. Where there is a dispute, the amount of compensation may be paid into a special compensation account, and the persons affected duly notified. As soon as practicable, the Commission will cause a survey of the land and cause to be issued new title documents for every affected parcel (Section 118). Under Section 120, after an award has been made, the Commission may take possession of the land affected.

18. I can summarise the above obligations of the Commission as follows :-

- (a) Issue notice of intention to acquire the land (in the notice show the purpose for which the land is to be acquired, its location, general description and approximate area) – Section 107.
- (b) Issue notice of an inquiry giving at least 15 days notice – Section 112.
- (c) Make an award – Section 113
- (d) Notify parties of the award – Section 114.
- (e) Pay compensation promptly – Section 115.

19. So, was the above followed for the particular parcels of land in issue ? I have seen the Gazette Notice No. 9343 of 18 December 2015 (the first notice). It is a notice of intention to acquire land and the various parcels of land to be acquired are duly listed. Section 107 (5A) prescribes what is supposed to be contained in this notice and it provides as follows :-

107(5A) The notice issued under subsection (5) shall contain the following particulars –

- (a) The purpose for which the land is to be compulsorily acquired; and*
- (b) The location, general description and approximate area of the land.*

20. I have looked at the said gazette notice and it does contain the purpose for the acquisition. It specifies that it is *“for the dualling of Mombasa-Mariakani (A109) Road Project in Mombasa County.”* There is no question therefore that the notice complied with Section 107 (5A) (a). In so far as the suit properties are concerned, I can see only MN/VI/2920 (area to be acquired being noted as 0.0155 Ha) and MN/VI/3028 - Surinder alias Shamshudin Khosla and Shirin Shamshudin Khosla (area to be acquired 0.0088 Ha). There is no indication of the plot MN/VI/2552 in this gazette notice. This Gazette Notice has a title MN/VI but no plot number and no name of owner is indicated. However, its area to be acquired is 0.1965Ha. Despite no name being given against the plot No. 2920, I think there was compliance, at least for the two plots No. 3028 and 2920, with Section 107 (5A) for although it is good practice to place a name, strictly, the law does not provide that the name of the owner be published. In fact, there may be circumstances where the name of the owner may not be indicated, because, for example, the property is in dispute. I see no reason why the petitioners should complain about this first notice at least in so far as the Plots No. 3028 and 2920 are concerned.

21. I have seen that subsequent to the notice, the petitioners asked to be provided with a survey report of the precise area being acquired for each of the three plots. There was actually a reply to this query, contained in the email of 4 May 2016, written by Panafcon, which inter alia attached a copy of the layout map covering the area where the facilities of the petitioners were located and I can see (though not very clear owing to a poor copy attached) acreages of the affected plot in the said sketch map. In my view, this answered the query of the petitioners and I really do not see what quarrel the petitioners have over the supply of a map, for it was indeed supplied. In fact, through the letter dated 25 May 2016, written by the 2nd respondent to the 1st respondent, the 2nd respondent sought clarity on the acreage to be acquired because of discrepancy between the acreage in the sketch map and the acreage depicted in the gazette notice, meaning that they were alive to the query of the petitioners and they were addressing it.

22. There then followed the Gazette Notice No. 1388 of 17 February 2017. It is also a notice to acquire, and in respect of the suit properties, that notice adds, as a corrigendum, the Plots No. 2920 and 3028, and this time indicates the names of the proprietor/s and the acreage to be acquired as being 0.0155 and 0.0088 respectively. I think, this Gazette Notice was making clear the acreage to be acquired and it also

provides the names of the affected persons who include the petitioners. I do not see what issue the petitioners would have over this notice, for it in fact cures, what they contend to have been irregularities, in the first notice. I am aware that the notice does not include the Plot No. 2552, but we shall come to this later.

23. The next is Gazette Notice No. 1389 of 17 February 2017. This was a notice of inquiry and it must have been issued in order to comply with the provisions of Section 112 of the Land Act. The notice is specific and it states that the Commission, on behalf of the Kenya National Highways Authority, “gives notice that inquiries for hearing of claims to compensation or interested parties in land required for dualling of Mombasa-Mariakani (A109) Road Project shall be held on the dates and places as shown in the schedule here below...”. The date of 7 March 2017 is given for the Plot No. 2920 and the date 8 March 2017 is given for the Plot No. 3028. The acreage to be acquired is noted to be 0.0155 for the plot No. 2920 and 0.0088. This notice of inquiry thus tallies with the notice of intention to acquire as amended in Gazette Notice No. 1388. I see no issue in so far as the Plots No. 2920 and 3028 are concerned.

24. What followed is Gazette Notice No. 5266 of 31 May 2018. That notice provides that the “National Land Commission intends to acquire additional parcels of land on behalf of Kenya National Highways Authority... Inquiries for hearing of claims to compensation by people interested in the land shall be held on the dates and places shown here below...”. In this notice, there is appearance of Plot No. 2552, noted as Plot MN/V2552 (sic), as a corrigendum with the size of the land being acquired noted to be 0.1763 Ha. It is apparent to me that this Gazette Notice was curing the omission of the Plot No. 2552 from the earlier notices. It was both informing of the intention to acquire it as well as providing for a date for its inquiry. What was not provided was the name of its owner, but as I have said above, the omission of a name, by itself, does not make the notice defective. Again, if the quarrel of the petitioners is that the property was not Gazetted, such argument holds no water.

25. My finding therefore is that there was compliance with Sections 107 and 112 of the Land Act, that is, there was gazetted the notice of intention to acquire, and a date for hearing for inquiry into the compensation payable, for all the properties.

26. What should have followed after the inquiry is the making of an award under Section 113. On this, the respondents have been silent and have not said anything about it. That Section in full provides as follows :-

113. Award of compensation

(1) Upon the conclusion of the inquiry, the Commission shall prepare a written award, in which the Commission shall make a separate award of compensation for every person whom the Commission has determined to have an interest in the land.

(2) Subject to Article 40 (2) of the Constitution and section 122 and 128 of this Act, an award—

(a) shall be final and conclusive evidence of—

(i) the size of the land to be acquired;

(ii) the value, in the opinion of the Commission, of the land;

(iii) the form of the compensation payable, whether the persons interested in the land have or have not appeared at the inquiry; and

(b) shall not be invalidated by reason only of a discrepancy which may thereafter be found to exist between the area specified in the award and the actual area of the land.

(3) If an interest in land is held by two or more persons as co-tenants, the award shall state—

(a) the amount of compensation awarded in respect of that interest; and

(b) the shares in which it is payable to those persons.

(4) Every award shall be filed in the office of the Commission.

27. I have already stated that there is no mention of an award by the respondents. Indeed, under Section 113 (4) an award is to be filed with the Commission, meaning that if there was any award, then it ought to have been readily available. Under Section 114, the parties are supposed to be notified of the award. The fact that the respondents have not mentioned any award in their affidavits, have not attached any award, and have not stated that they informed the petitioners of any award, can only bring me to one conclusion, that is, that no award has so far been made in respect of the suit properties. Of course without an award, Section 115, that is the payment of compensation, cannot take place. The petitioners say that they have not been paid any compensation and the respondents do not pretend to have paid any compensation.

28. I think that this petition is merited, only in so far as the respondents failed to make an award, notify the petitioners of the award, and pay compensation in line with the award. What I will order the respondents to do is to comply with Section 113, that is make the award, and Section 114, notify the parties of the award, upon which payment can be made if there is no contest, or if there is a contest, deposit of the money can be made into the special compensation account.

29. Turning to the prayers in the petition, prayer (a) is seeking a declaration, but I see no point of addressing it, for I do not know what findings may have emerged in the inquiry and I do not wish to pre-empt any finding. In any case, I do not have a dispute before me over

ownership of the property. I believe that my findings that an award needs to be made, so that the process moves forward, takes care of the prayers (b) and (c). There are prayers for a permanent injunction being prayers (d) and (e). What I order the parties is to proceed to implement Sections 113, 114 and 115 of the Land Act. I will not make any order for a permanent injunction because given the time that this petition has taken, it may very well be the position that the project is well under way, and it will not be in public interest to stop the process, while the parties herein are sorting out the amount payable. I am therefore not persuaded to make the orders of permanent injunction. Prayer (f) seeks orders to award compensatory damages. I need not make this order for it will naturally follow the award. In other words, the award is the compensation payable to the petitioners. Prayer (g) seeks costs. I am not persuaded to award costs to the petitioner. The petitioner came with a long winded petition claiming violations that I have found non-existent save for the award. If the petitioner had simply come to court to ask for an order to compel an award, I would probably have been moved to award costs. If the petitioners were not clear what is affected on the ground, they would simply have asked for a meeting for this to be made clear. Those are matters for negotiation. You don't rush to court or keep a matter in court when the avenue for negotiation is there. For the circumstances of this case, each party will bear its own costs.

30. Before I close, I am aware that the petitioners claim compensation for the three suit properties but there are issues that need to be resolved on two of the plots, that is Plot No. 2552 and Plot No. 2920. The petitioner in fact needed to be candid that the Plot No. 2552, is the subject of litigation in Mombasa ELC Petition No. 41 of 2013, which this court is seized of. There appears to be an issue over the proprietorship of that land, or part of it, and it is not very clear whether the whole of the acreage depicted in the title is private land or whether part of it was already acquired by the Government so as to constitute public land. This is in fact discernible from the various survey reports annexed by the petitioners in this suit. I need not say any more on that because the issue will probably be resolved in Mombasa ELC Petition No. 41 of 2013. For the Plot No. 2920, I have seen that the head lessor is Kenya Railways Corporation, but I have not seen this entity mentioned either in the Gazette Notices, or in these proceedings. They may have an interest in that land which the parties need to take account of.

31. In conclusion, there will only be one substantive order which I shall make, and it is as follows :

That the 2nd respondent is hereby ordered to make an award over the properties MN/VI/2552, MN/VI/2920 and MN/VI/3028 and notify the petitioners of its award within the next 21 days.

32. The other processes of the law will follow their natural course once the award is made.

33. Judgment accordingly.

DATED AND DELIVERED THIS 10 DAY OF FEBRUARY 2021

JUSTICE MUNYAO SILA

JUDGE, ENVIRONMENT AND LAND COURT

AT MOMBASA