



REPUBLIC OF KENYA



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Trustees for Kenya People’s Contractors Ltd v Attorney General & 4 others (Environment & Land Case E013 of 2020) [2025] KEELC 1452 (KLR) (12 March 2025) (Judgment)

Neutral citation: [2025] KEELC 1452 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MAKUENI
ENVIRONMENT & LAND CASE E013 OF 2020**

**TW MURIGI, J
MARCH 12, 2025**

BETWEEN

THE TRUSTEES FOR KENYA PEOPLE’S CONTRACTORS LTD PLAINTIFF

AND

THE ATTORNEY GENERAL OF KENYA 1ST DEFENDANT

**THE CABINET SECRETARY, MINISTRY OF INTERIOR AND
COORDINATION OF NATIONAL SECURITY 2ND DEFENDANT**

THE NATIONAL LAND COMMISSION 3RD DEFENDANT

THE COUNTY COMMISSIONER, MAKUENI COUNTY 4TH DEFENDANT

**THE DIRECTOR OF PHYSICAL PLANNING, MAKUENI
COUNTY 5TH DEFENDANT**

JUDGMENT

1. The Plaintiff instituted this suit against the Defendants vide a Plaint dated 4th December, 2020 seeking the following orders: -
 - a. An order of permanent injunction restraining the Defendants from encroaching or in any other manner interfering with the Plaintiff’s land parcel No. Nzai/Kikumini/201.
 - b. An order of eviction against the Defendants compelling them to remove the offending structures that have encroached into the Plaintiff’s parcel of land No. Nzai/Kikumini/201.
 - c. Alternatively, the Plaintiff prays for full compensation as entitled to them under the parameters set for lawful compulsory acquisition, set under Article 40 of *the Constitution* and the Land Acquisition Act Cap 295, Laws of Kenya.
 - d. Costs of this suit.



2. The 1st, 2nd, 4th and 5th Defendants filed a Statement of defence dated 15th November, 2022 in which they denied the Plaintiff's claim. They urged the court to dismiss the suit with costs.
3. The Plaintiff filed a reply to the 1st, 2nd, 4th and 5th Defendants Statement of defence dated 22nd February, 2023 in which they reiterated the contents of the Plaintiff.
4. The 3rd Defendant did not enter appearance or file defence despite being duly served.

The Plaintiff's Case

5. The Plaintiff called one witness who testified in support of its case. PW1 Samson Ndiku adopted his witness statement dated 19/03/2021 as his evidence in chief. He also produced the documents in the list dated 04/12/2020 as PEX 1 – 4. PW1 testified that the Plaintiff is the registered proprietor of land Parcel No. Nzai/Kikumini/201 (the suit property herein). It was his testimony that sometimes in the year 2007, the Chief's Office Kikumini Location was constructed on the suit property without the Plaintiff's knowledge or consent.
6. He further testified that in the year 2017, an Administration Police Base was established in the suit property in total disregard of the legal procedures. He went on to state that in the year 2018, the Director of Physical Planning Makueni County amended the area map by changing the status of the suit property from being private land to public land without the Plaintiff's knowledge or consent. He contended that the amendment of the area map was unlawful because the land had neither been compulsorily acquired by the State nor compensation paid to the owners thereof.
7. He further contended that the Defendants' actions violate the Plaintiff's right to property. He stated that the Plaintiff had written letters to the Chief as well as to the County Commissioner Makueni complaining about the said violations but had received no response. In conclusion, he urged the court to grant the orders sought in the Plaintiff.
8. In cross-examination, he testified that the Plaintiff purchased the suit property in the 1970s. He further testified that prior to the year 2007 the Plaintiff used to lease out the land to herders. He explained that after the suit property was allocated to Plaintiff by the Land Adjudication Office, they followed due process and were eventually issued with the title deed by the Land Registrar. He stated that the Plaintiff should be compensated the monetary value of the land.
9. The 1st, 2nd, 4th and 5th did not call any witnesses in support of their case.
10. After the close of their respective cases, the parties agreed to file and exchange their written submissions.

The Plaintiff's Submissions

11. The Plaintiff filed its submissions dated 20th October, 2024. On its behalf, Counsel identified the following issues for the court's determination: -
 - i. Whether land Parcel No. Nzai/Kikumini/201 is public land;
 - ii. Whether the Plaintiff is the registered proprietor of land Parcel No. Nzai/Kikumini/201; and
 - iii. Whether the Plaintiff is entitled to compensation for the acquisition of Parcel No. Nzai/Kikumini/201.
12. On the first issue, Counsel submitted that the suit property does not fall in the category of public land as defined under Article 62 of *the Constitution*.



13. On the second issue, Counsel submitted that the Plaintiff had produced a copy of the Title deed which demonstrates that it is the absolute registered proprietor of the suit property.
14. On the third issue, Counsel submitted that the Defendants did not follow the process of compulsory acquisition of the suit property as stipulated by law. Counsel further submitted that the Defendants disregarded all communication from the Plaintiff regarding the acquisition of the land. Counsel contended that the Plaintiff is entitled to compensation for the unlawful acquisition of its property adding that the Plaintiff's evidence was not controverted. Counsel urged the court to award compensation and costs to the Plaintiff as prayed.
15. As at the time of writing this judgment, the 1st, 2nd, 4th and 5th Defendants had not filed their submissions as directed.

Analysis And Determination

16. Having considered the pleadings, the evidence on record and the submissions by the Plaintiff, the following issues fall for determination: -
 - i. Whether the suit property is public or private land.
 - ii. Whether the Plaintiff is entitled to compensation for the suit property.
17. It is common ground that: -
 - i. The suit property is registered in the name of the Plaintiff;
 - ii. The suit property is under the occupation of the Area Chief Kikumini Location and the Administration Police Base.

Whether the suit property is public or private land

18. Article 62 (1) of *the Constitution* defines public land to comprise the following: -
 - (1) 1) Public land is—
 - a. land which at the effective date was unalienated government land as defined by an Act of Parliament in force at the effective date;
 - b. land lawfully held, used or occupied by any State organ, except any such land that is occupied by the State organ as lessee under a private lease;
 - c. land transferred to the State by way of sale, reversion or surrender;
 - d. land in respect of which no individual or community ownership can be established by any legal process;
 - e. land in respect of which no heir can be identified by any legal process; ...
 - m) any land not classified as private or community land under this Constitution; and
 - n) any other land declared to be public land by an Act of Parliament—
 - i. in force at the effective date; or enacted after the effective date
19. The 1st, 2nd, 4th and 5th Defendants pleaded at paragraph 4 of their defence that the Chief's office and the Administration Police Base are located within public and not private land. Section 107 (1) of the *Evidence Act* provides that:-



1. Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.
20. Section 116 of the *Evidence Act* outlines as follows: -

When the question is whether any person is owner of anything of which he is shown to be in possession, the burden of proving that he is not the owner is on the person who affirms that he is not the owner.
21. The Defendants did not call any evidence in support of their claim.
22. On their part, PW1 explained that the land was recorded in the names of the Plaintiff during the land adjudication exercise conducted in the 1970s. He added that the title deed for the suit property was issued to the Plaintiff in September 2007 after it complied with the due processes.
23. Section 9 (2) (c) of the *Land Act*, 2012 outlines the criteria for conversion of private land into public land as follows:-
 - (c) private land may be converted to public land by—
 - (i) compulsory acquisition;
 - (ii) reversion of leasehold interest to Government after the expiry of a lease; and
 - (iii) transfers; or
 - (iv) surrender.
24. The Defendants did not demonstrate the manner in which they occupied the suit property. It is the finding of this court that the Defendants are in occupation of the suit property unlawfully. From the foregoing, I find that the Defendants illegally took possession of the suit property.

Whether the plaintiff's land was compulsorily acquired.

25. The Plaintiffs contended that the Defendants compulsorily acquired the suit property. Compulsory acquisition is the power of the government to acquire private rights in land without the willing consent of its owner or occupant in order to benefit the society. The law governing compulsory acquisition is found in Part VIII, Section 107 to 133 of the *land Act*. The process of compulsory acquisition of land was laid down in the case of Patrick Musimaba vs the National Land Commission.
26. It is not in dispute that the Plaintiff is the registered proprietor of the suit property. PW1 produced the title for the suit property. Article 40(1) of *the Constitution* provides that:-
 - (1) Subject to Article 65, every person has the right either individually or in association with others to acquire and own property-
 - (a) 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 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 the grounds specified or contemplated in Article 24(4).



27. The Plaintiff having demonstrated that it is the registered proprietor of the suit property, it is entitled to rights and privileges belonging thereto. Section 24 of the [Land Registration Act](#), 2012 which provides as follows: -

Subject to this Act—

the registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto; ...

Section 25 of the [Land Registration Act](#) provides for the rights of a proprietor. It provides as follows:

1. The rights of a proprietor, whether acquired on first registration or subsequently for valuable consideration or by an order of the court, shall not be liable to be defeated except as provided by this Act and shall be held by the proprietor, together with all privileges and appurtenances belonging thereto, free from all other interests and claims whatsoever, but subject;

These provisions vest the registered owner of land with rights and privileges and provides for instances when the right can be taken away.

28. No evidence was adduced to show that plaintiff's title had been cancelled and or nullified by lawful procedure. From the foregoing, it is the finding of this court that the suit property herein is private land belonging to the plaintiff. It is evident that the process to acquire the suit property was not adhered to.

Whether The Plaintiff Is Entitled To Compensation For The Suit Property

29. 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.

30. Section 111 of the [Land Act](#), 2012 outlines the different modes of compensation which the State may provide where registered land has been acquired compulsorily as follows: -

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.



- (1B) 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
- (1C). Subject to subsection (1B), an owner of land compulsorily acquired shall elect the form of compensation.

31. Since the Plaintiff has demonstrated that there has been no conversion of the suit property from private land to public land, it is entitled to just compensation from the State as provided by law. Illegal take over of the suit property cannot take away the Plaintiff's right to compensation. The Plaintiff produced sufficient evidence to demonstrate unlawful occupation of the suit property by the State.
32. In the end I find that the Plaintiff has proved its case against the Defendants on a balance of probabilities as required.
33. The upshot of the foregoing is that I enter judgment against the Defendants jointly and severally in the following terms: -
- 1. The Plaintiff shall be given just compensation as entitled to them under the parameters set for lawful compulsory acquisition set under Article 40 of *the Constitution* and the *Land Act*, 2012.
 - 2. The Plaintiff is awarded costs of the suit.

RULING DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS THIS 12TH DAY OF MARCH, 2025.

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T. MURIGI

JUDGE

In The Presence Of:-

Absence of the parties

Ahmed – Court assistant

