



REPUBLIC OF KENYA



**KENYA LAW**  
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**Aloka Limited v National Land Commission & another (Environment & Land  
Petition 31 of 2020) [2025] KEELC 4906 (KLR) (2 July 2025) (Judgment)**

Neutral citation: [2025] KEELC 4906 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA  
ENVIRONMENT & LAND PETITION 31 OF 2020**

**SM KIBUNJA, J  
JULY 2, 2025**

**BETWEEN**

**ALOKA LIMITED ..... PETITIONER**

**AND**

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

**KENYA NATIONAL HIGHWAYS AUTHORITY ..... 2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

1. The petition brought before court was on account of a parcel of land known as V/MN/1052 which at the time of writing of this judgment had already been compulsorily acquired for a road expansion project known as dualling of the Mombasa-Mariakani Road A109 and which had been published in the Kenya Gazette No. 1945 of 3rd March 2017. The petitioner was asked by the respondents to prepare a claim, which they did and made a claim for Kshs.242,506,460 but were only awarded Kshs.9,000,000 at first. When the petitioner lodged a complaint, the 1st respondent undertook survey and valuation of the suit property afore stated, and they revised the award upwards to Kshs. 180,000,000. However, the petitioner was served with an award of Kshs.58,492,800, which he claims had no justification or explanation. He thus claims that his right to fair administrative action under Article 47 of *the Constitution*, and the right to prompt payment in full of just compensation under Article 40 (3) (b) (i) and (ii). The reliefs sought by the petitioner are as follows:
  - i. “A declaration that the Petitioner herein reserves a right to the ownership and use of property.
  - ii. A declaration that the right to ownership and application of property is only derogable by the state or its agencies (in this instance through compulsory acquisition) upon full and just payment of compensation.
  - iii. A declaration that the non-compliance, irregularities and improprieties in the said process was substantial and significant that they affected final award thereof.



- iv. A declaration that the respondents herein grossly flawed the processes alluded to in (ii and iii) above.
  - v. An order that the respondents herein uphold the initial award of Kshs. 180,000,000 and remit the same to the Petitioner forthwith or in the alternative, an order that a fresh valuation of the property and damages consequent thereto ensues.
  - vi. Costs of the Petition; and
  - vii. Any other orders that the Honourable Court may deem just and fit to grant.”
2. The 2<sup>nd</sup> respondent opposed the petition through the replying affidavits of Daniel Mbuteti, and Robert Itambo, the Senior Surveyors at its Survey Department, Directorate of Highway Design & Safety, sworn on 8th December 2023, and 28<sup>th</sup> November 2024 respectively, inter alia deposing that the 2<sup>nd</sup> respondent is undertaking construction of the Mombasa - Mariakani (A109) Road project Lot 1: Digo Road/Kenyatta Avenue Junction-Kwa Jomvu, which involves construction of additional lanes, three major interchanges at Changamwe, Mikindani and Kwa Jomvu area; that they identified the suit property as it was next to the ongoing construction and pursuant to gazette notices Nos. 9343, 1388 and 1389, the 1<sup>st</sup> respondent published an addendum vide gazette No. 1945 in accordance with section 162(2) of the Land Act, 2012 on the government’s intention to compulsorily acquire the suit property; that the registered owner of the suit property was compensated; that the petitioner was a tenant on the suit property where he had leased a godown and was offered Kshs.9million which it rejected and lodged a complaint which was referred to the 1<sup>st</sup> respondent, and the amount was deposited in the 1<sup>st</sup> respondent’s escrowed account; that the 1<sup>st</sup> respondent re-inspected the petitioner’s affected business on the suit property and revised the award upwards to Kshs.180million; that the 2<sup>nd</sup> respondent was aggrieved by the enhanced award and asked the 1<sup>st</sup> respondent to address the huge variance in the award; that the 1<sup>st</sup> respondent carried out the valuation of the affected business again and adjusted the offer from Kshs.180million to Kshs.58,492,800 which the petitioner accepted by signing the acceptance statutory forms; that the amount was sent in two tranches to the 1<sup>st</sup> respondent’s accounts in fulfilment of the 2<sup>nd</sup> respondent duty to compensate the petitioner; that compensation should be fair and just so as to safeguard the limited government resources; that the petitioner was compensated for loss of business arising from need to relocate its machinery and that having accepted the award of Kshs.58,492,800, it was estopped from making a further claim of Kshs.180million.
3. The petitioner called Samir Shah, a director of the petitioner, who testified as PW1 and relied on the supporting affidavit sworn on 2nd September 2020, as his evidence in chief and produced the documents on the list dated 1st October 2023. It was his testimony that the petitioner was a tenant on the suit property and the landlord, one Kensington property developers, wrote to the petitioner a letter dated 21<sup>st</sup> March 2017, informing it of the impending compulsory acquisition of the suit property, and asking that it prepares a report for the amount they wish to claim as compensation. That the petitioner, being a manufacturing plant, and taking into account the cost of relocation and its impact on its operations, damages and loss of income submitted to the 1<sup>st</sup> respondent a comprehensive claim of Kshs.242,506,460. The petitioner received an offer of Kshs.9million, which the petitioner declined/objected to. The 1<sup>st</sup> respondent then visited the premises and thereafter raised the offer to kshs.180million, out of which they were paid Kshs.58,492,800, and told to wait for the balance. They used that amount to pay their creditors but when they reminded the respondents of the balance of the award, the 1<sup>st</sup> respondent declined to pay. During cross-examination, PW1 admitted that he is not a qualified or licensed valuer and that he came up with the figure of Kshs.242,506,460 with the assistance of his technical team. He also admitted that he was the one who accepted Kshs.58,492,800



offered as award by the 1<sup>st</sup> respondent. He also stated that he did not fill part (b) for rejection of the award on the form. He added that he accepted the above amount as part payment with the balance to be paid later. He first stated that he was only paid Kshs.49,492,800, but later admitted that he was paid the full amount of Kshs.58,492,800, through the banking details he had provided. That the 2<sup>nd</sup> respondent did not visit their premises for valuation but the 1<sup>st</sup> respondent did as can be seen by the letter dated 8<sup>th</sup> January 2019. He admitted that the petitioner never received the enhanced award for Kshs.180million, but got to know of it through the 1<sup>st</sup> respondent's letter. He prayed for the court to grant the petitioner's claim of Kshs.180million less what has been paid.

4. The 2<sup>nd</sup> respondent called Robert Itambo, who testified as DW1, and relied on a replying affidavit he deposed on 28th November 2024. He stated that they were compensating the petitioner for the cost of moving the business from the suit property to a new site. He testified that the role of the 2<sup>nd</sup> respondent was only to pay for the compensation award. He demonstrated that they had earlier remitted Kshs.9 million to the 1<sup>st</sup> respondent before remitting a balance of Kshs. 49,492,800. He narrated that the 1<sup>st</sup> respondent had awarded Kshs.180 million to the petitioner in January 2019. The award was reduced to Kshs.58,492,800 vide the 1<sup>st</sup> respondent's letter of September 2019, and the petitioner accepted that award vide a letter of award dated 30th October 2019. He stated that he has been working with the 2<sup>nd</sup> respondent since 2012, and he has never seen a conditional acceptance of an award like the plaintiff alleged. DW1 pointed out that if the petitioner was not satisfied with the award, they would have signed part (b) of the award indicating they have rejected it. Upon cross-examination, he stated that valuation is done by the 1<sup>st</sup> respondent and is thereafter forwarded in a schedule to the 2<sup>nd</sup> respondent, who then avails the funds for disbursement to the beneficiaries. That in all cases, a valuation is done before an award. That acceptance of an award and payment cannot occur before an award is made. He reiterated the 2<sup>nd</sup> respondent's defence that they sent the money in two tranches, the first being vide a letter dated 24<sup>th</sup> October 2018, and the second through a letter dated 25<sup>th</sup> October 2019, after the award of 29<sup>th</sup> August 2019. It is however noted that the award itself is dated 30<sup>th</sup> October 2019. He said that payments are based on requests from the 1<sup>st</sup> respondent and that the request of 9<sup>th</sup> September 2019 superseded the earlier request of January 2019. He admitted that only the 1<sup>st</sup> respondent can explain the change in the award from Kshs.9million to Kshs.180 million and then to Kshs.58,492,800.
5. Though the 1<sup>st</sup> respondent was always aware of the hearing date, it did not attend or present any witness on the date set for defence hearing. It had not even filed any reply to the petition by the date of defence hearing. It was therefore flustering that after the 1<sup>st</sup> defendant's case was marked closed, on 13<sup>th</sup> February 2025, it filed a replying affidavit on 13<sup>th</sup> March 2025, sworn by Mariko Kaliamoi, its Principal Valuation Officer, sworn on 13<sup>th</sup> February 2025. All parties and legal practitioners are expected to assist the court further the overriding objectives in civil litigation/disputes, by participating in the processes of the court and complying with its directions and orders for justice to be dispensed without undue delay and in a cost effective manner. The court is left wondering what the 1<sup>st</sup> respondent wanted the court to do with their replying affidavit that was filed long after the pleadings had closed, hearing of witnesses done and parties' cases closed. Evening assuming the court was to consider the contents of the said replying affidavit, the question that will come to the fore is whether it will be just and fair to the petitioner who closed his case without being served with the said replying affidavit and being accorded a fair chance to be heard on it. The 1<sup>st</sup> respondent replying affidavit filed after close of the parties' cases and without the leave of the court is therefore struck out.
6. The learned counsel for the petitioner, the 1<sup>st</sup> & 2<sup>nd</sup> respondents filed their submissions d6th March 2025, 24<sup>th</sup> March 2025 and 17<sup>th</sup> March 2025 respectively, that the court has considered.



7. The issues for the determinations by the court are as follows:
- a. Whether the claim has met the constitutional threshold test for a petition.
  - b. Whether the petitioner accepted an award of Kshs.58,492,800 or Kshs. 180 million.
  - c. What order(s) is the Petitioner entitled to.
  - d. Who bears the costs?
8. The court has carefully considered the pleadings, oral and documentary evidence tendered, submissions by counsel and has come to the following determinations:
- a. Counsel for the 1st respondent argues that this petition does not raise any constitutional issues but rather is a camouflaged claim for money. To determine the veracity of this argument, the court looks to *Anarita Karimi Njeru versus Republic (1979) eKLR* where the court set the threshold as follows:

“we would however again stress that if a person is seeking redress from the High Court on a matter which involves reference to *the constitution*, it is important (if only to ensure that justice is done to his case) that he should set out with reasonable degree of precision that of which he complains, the provisions said to be infringed and the manner in which they are alleged to be infringed.”
- Further, in the case of *Mumo Matemo versus Trusted Society of Human Rights Alliance and 5 others (2013) eKLR* the court emphasized this position and held that:
- “it is our finding that the petition before the High Court was not pleaded with precision as required of constitutional petitions. Having reviewed the Petition and the Supporting Affidavit, we have concluded that they did not provide adequate particulars of the claims relating to the alleged violations of *the Constitution* of Kenya and the Ethics and anti- Corruption Act, 2011, accordingly the petition did not meet the standards enunciated in the *Anarita Karimi Njeru* case.”
- b. The petitioner has clearly demonstrated that it was not satisfied with the compensation of Kshs 58,492,800 and it was thus not just. It has also not come out how the 1<sup>st</sup> respondent came up with the different figures from Kshs. 9 million to Kshs. 180 million and finally the above figure and thus the petitioner has demonstrated that their constitutional right to fair administrative action was compromised. The court is thus convinced that the petition is properly before the court and has met the constitutional threshold test. The court also notes the arguments by the 1st respondent that this matter ought to have first been referred to the Land Acquisition Tribunal as per section 133C of the *Land Act* Chapter 280 of Laws of Kenya. However, at the time this suit was filed, the tribunal was not yet formed. The tribunal was formed on 15th September 2023 and thus the argument fails.
  - c. On the second issue of just payment, the respondents counsel referred the court to the locus classicus of *Patrick Musimba versus National Land Commission & 4 others [2016] eKLR*, where the court addressed the whole concept of compulsory acquisition. In order to address whether due process was followed, the court has to reiterate the guidelines stated in the said decision as follows:



- i. The land must be acquired for a public purpose or in public interest as dictated by Article 40(3) of *the Constitution*. In our view, the threshold must be met: the reason for the acquisition must not be remote or fanciful. The National Land Commission needs to be satisfied in these respects and this it can do by undertaking the necessary diligent inquiries including interviewing the body intending to acquire the property.
  - ii. Under Sections 107 and 110 of the *Land Act*, the National Land Commission must then publish in the gazette a notice of the intention to acquire the land. The notice is also to be delivered to the Registrar as well as every person who appears to have an interest in the land.
  - iii. The National Land Commission must also ensure that the land to be acquired is authenticated by the survey department for the rather obvious reason that the owner be identified. In the course of such inquiries, the National Land Commission is also to inspect the land and do all things as may be necessary to ascertain whether the land is suitable for the intended purpose.
  - iv. Section 112 of the *Land Act* then involves the landowner directly for purposes of determining proprietary interest and compensation. The section has an elaborate procedure with the National Land Commission enjoined to gazette an intended inquiry and the service of the notice of inquiry on every person attached. The inquiry hearing determines the persons interested and who are to be compensated. The National Land Commission exercises quasi-judicial powers at this stage.
  - v. On completion of the inquiry the National Land Commission makes a separate award of compensation for every person determined to be interested in the land and then offers compensation.
  - vi. The process is completed by the possession of the land in question being taken by the National Land Commission once payment is made. However, the possession may actually be taken before all the procedures are followed through and before compensation has been made so long as the award has been accepted. The property is then deemed to have vested in the National or County Government as the case may be, with both the proprietor and the Land Registrar being duly notified: see Sections 120-122 of the *Land Act*.
  - vii. If land is so acquired the just compensation is to be paid promptly in full to persons whose interests in land have been determined
- d. It would seem from the procedure above, and from the testimony of the witnesses that all the procedures were followed. However, where they disagree is how the award changed from Kshs. 180 million to Kshs. 58,492,800. The letter relied on is the one dated 8th January 2019 where the then C.E.O, Prof Muhammad A. Swazuri indicated that they had inspected and held inquiry over affected people and Aloka Limited was listed in the compensation schedule as one of the affected people. When the first offer of Kshs. 9 million was rejected, the petitioner admits that the 1st respondent came onto the property and conducted valuation and the result was the above mentioned letter. DW 1 testified that they were dissatisfied with the huge disparity and complained to the 1st respondent vide their letter dated 19th February 2019. However, the said letter has no mention of the petitioner. In a surprising twist of events the 1st respondent in their letter dated 9<sup>th</sup> September 2019 reviewed the award amount to Kshs. 58,492,800.



- e. There is a clear lapse of information or evidence as to how the 1<sup>st</sup> respondent decided to change the figures. Both PW1 and DW1 did not state that they came a second time to conduct valuation. It was the testimony of DW1 that the reasons for this downward revision can only be explained by the 1st respondent, who however opted not tender evidence. In the case of *Horn versus Sunderland Corporation* [1941] 2 KB 26,40, the court held that:

“The word “compensation” almost of itself carries the corollary that the loss to the seller must be completely made up to him, on the ground that unless he receives a price that fully equaled his pecuniary detriment, the compensation would not be equivalent to the compulsory sacrifice”.

For it to be just, the compensation had to follow the processes above mentioned a second time and in that way see what could have changed the value of the award to the petitioner. No such evidence was produced and it is unfortunate that the 1st respondent did not participate in the hearing by tendering witnesses for cross-examinations on the contentious change in the valuation.

- e. Despite the court’s order of marking the 1st respondent’s defence as closed, the court has perused the replying affidavit which spoke of one valuation and no valuation form was attached to show the date. This indeed amounted to a great miscarriage of justice to the petitioner. In the case of *Ngugi Mbugua versus Chairman of National Land Commission & 3 others* (2021) eKLR, the Court held that;

“... That 1st Respondent having failed for produce a counter valuation to the one produced by the Petitioner and the allegation by the Petitioner that a larger portion was acquired as opposed to which was gazetted, the Court finds and holds that it could only mean that the award for compensation given to the petitioner was not just and was it lower as the same is not verifiable”.

Though the circumstances in this case are different, the spirit is the same whereby no second valuation was done to show the reduction of the value of the award to the petitioner. In the case law advanced by the 2nd respondent of *Paul Njoroge Waweru versus Joash Ochieng t/a Aegis International & 3 others* Machakos ELC 357 of 2017, the National Land Commission who is the 1st respondent in this case had submitted its documents, but in this case, the court is groping in the dark and cannot make assumptions on behalf of the 1st respondent. The 1st respondent has failed in its duty under Article 47 of *the Constitution* and the court is left to infer that the same acted on the whims of the 2nd respondent and significantly reduced the award amount. With the 1<sup>st</sup> respondent failing to file a reply to the petition in time and participate in the hearing of the petition, to inter alia shed light on the reasons for reduction of the award from Kshs.180million to Kshs.58,492,800, the petitioner will forever feel it was not justified.

- e. The law under section 115 *Land Act* Chapter 280 of Laws of Kenya prescribes that once the petitioner accepted the award of Kshs.58,492,800, it was estopped from asking for more payment. There is an avenue under section 115 (1) (b) of the Act, that provided for rejection of an award, but the petitioner herein instead chose to accept the amount albeit inscribing the word ‘part payment’. Section 120 of the *Evidence Act* chapter 80 of Laws of Kenya provides as follows:

“When one person has, by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief,



neither he nor his representative shall be allowed, in any suit or proceeding between himself and such person or his representative, to deny the truth of that thing.”

The court also refers to decision by Lord Denman CJ in the English case, *Pickard versus Sears* 112 ER 179 who captured the doctrine of estoppel as follows;

“The rule of law is clear that where one, by his words or conduct, willfully causes another to believe in the existence of a certain state of things, and induces him to act on that belief, so as to alter his own previous position, the former is precluded from averring against the latter a different state of things as existing at the time.”

In *Serah Njeri Mwobi versus John Kimani Njoroge* (2013) eKLR the Court of Appeal held that:

“The doctrine of estoppel operates as a principle of law which precludes a person from asserting something contrary to what is implied by a previous action or statement of that person.”

The law is clear and unfortunately, there is nothing the court can do to vary the award that has already been accepted by the petitioner, despite the obvious mystery on how it was rendered by the 1<sup>st</sup> respondent.

- e. Under section 27 of the *Civil Procedure Act*, chapter 21 of Laws of Kenya, costs follow the events unless where for good cause the court orders otherwise. The petitioner has succeeded in proving that the compensation was not just and thus partly succeeds, hence the costs should be borne by the respondents.
9. From the foregoing determinations, the court finds the petitioner has partially succeeded in proving its claim against the respondents. Judgement is therefore entered in favour of the petitioner against the respondents in terms of prayers (ii), (iii) & (vi) and the following orders issued:
- a. That a declaration that the right to ownership and application of property is only derogable by the state or its agencies (in this instance through compulsory acquisition) upon full and just payment of compensation.
  - b. That a declaration that the non-compliance, irregularities and improprieties in the said process was substantial and significant that they affected final award thereof.
  - c. The petitioner is awarded costs of the Petition.
  - d. All the other prayers are dismissed.

It is so ordered.

**DATED, SIGNED AND VIRTUALLY DELIVERED ON THIS 2ND DAY OF JULY 2025.**

S. M. KIBUNJA, J.

ELC Mombasa.

In The Presence Of:

Petitioner : Mr. Oyatta

Respondents : M/s Miriti for Maruti for 2<sup>nd</sup> Defendant

Shitemi-court Assistant.



S. M. Kibunja, J.

ELC Mombasa.

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