



Gatimu & another v National Land Commission & 2 others (Environment and Land Case 23 of 2018) [2025] KEELC 5906 (KLR) (2 July 2025) (Judgment)

Neutral citation: [2025] KEELC 5906 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT EMBU
ENVIRONMENT AND LAND CASE 23 OF 2018**

AK BOR, J

JULY 2, 2025

BETWEEN

CHARLES MUNENE GATIMU 1ST PLAINTIFF

KELLEN WARIARA MUNENE 2ND PLAINTIFF

AND

THE NATIONAL LAND COMMISSION 1ST DEFENDANT

THE KENYA AIRPORTS AUTHORITY 2ND DEFENDANT

THE HONOURABLE ATTORNEY GENERAL 3RD DEFENDANT

JUDGMENT

1. Through the amended plaint dated 20/4/2023, the Plaintiffs instituted this suit as the registered owners of the land known as Gaturi/Weru/2970 measuring approximately 0.96369 and Gaturi/Weru/1087 subdivided into 33 plots (2935 to 2967) with each plot measuring 0.06 hectares (ha) claiming that sometime in September 2012, while they were in active occupation and use of their land, the Commissioner of Lands, the predecessor of the National Land Commission (NLC), commenced the process of compulsory acquisition of their land through the publication of Kenya Gazette No. 15513 of 2/11/2012. Their land was being acquired for the expansion of the Embu Airstrip, being a facility owned and managed by the 2nd Defendant, the Kenya Airports Authority (KAA).
2. The Plaintiffs averred that upon publication of the gazette notice, NLC conducted a valuation of the parcels of land and on 19/4/2013 it determined awards payable as compensation to the Plaintiffs for the suit land. The award for Gaturi/Weru/2970 was Kshs. 2,262,490/= while that for Gaturi/Weru/1087, which was subdivided into Gaturi/Weru/2935 to Gaturi/Weru/2967, was Kshs. 18,975,000/=. They averred that they accepted the offer contained in the awards and executed a formal acceptance and request for compensation agreement on 22/4/2013, after which they surrendered and vacated the acquired parcels of land and gave vacant possession to the 2nd Defendant who took possession to date.



3. The Plaintiffs contended that despite taking possession of their land, NLC and the 2nd Defendant failed or refused to pay the Plaintiffs the compensation award of Kshs. 21,237,490/=. The Plaintiffs contended that the failure to pay the compensation was in breach of the statutory and constitutional provisions on compulsory acquisition of land and amounted to arbitrary deprivation of their property which continues to put them in financial loss and deprives them of the enjoyment of their land yet the land would have generated income for the Plaintiffs.
4. They sought a declaration that they were the rightful owners of Gaturi/Weru/1087 subdivided into Gaturi/Weru/2935 to 2970, and that they were entitled to compensation for the compulsory acquisition of their land at market rates. They also sought interest under Section 117 of the Land Act with effect from 2/11/2012 until payment in full. In addition, they sought exemplary and aggravated damages and made an alternative prayer for the 1st Defendant to degazette parcel numbers Gaturi/Weru/1087 (subdivided into Gaturi/Weru/2935 to 2970 and an order directing the Defendants to compensate them for loss of use during the period when the land was gazetted.
5. In the defence dated 19/1/202, the 1st Defendant denied that it was involved in the alleged compulsory acquisition, valuation, or compensation for the suit land while explaining that the process was undertaken by the former Commissioner of Lands. It denied holding any compensation funds and stated that the Plaintiff's claim could not be sustained against them.
6. The 2nd Defendant acknowledged that the compensation claim arose from a 2010 government initiated expansion of Embu Airstrip to accommodate the National Intelligence Service (NIS) which necessitated the compulsory acquisition of neighbouring plots including the Plaintiffs' land. It averred that the Ministry of Transport instructed it to facilitate the acquisition, which was formalised by the NLC through Gazette Notice No. 15513 on 2/11/2012. The compensation for the Plaintiff's land was valued at Kshs. 21,237,490/= but payment was not made because the Ministry failed to release the funds.
7. The 2nd Defendant explained that in 2014, the Ministry informed them that NIS had re-designated the airstrip as a security installation thereby limiting civilian access except during emergency situations. That the modification of the original objective of the expansion of the Airstrip rendered some acquisitions, including those of the Plaintiffs' land, unnecessary. Consequently, the 2nd Defendant requested NLC to de-gazette the land.
8. The 2nd Defendant maintained that the Ministry of Transport, which is now the Ministry of Roads and Transport, bore the responsibility of compensating the Plaintiffs. It emphasised that KAA never took possession of the Plaintiffs' parcels of land and in its view, no formal compulsory acquisition ever materialized. That was the position taken by the 3rd Defendant.
9. The suit was heard on 17/2/2015. The 1st Plaintiff testified and adopted his statement which replicates the averments in the suit. He produced illegible copies of the gazette notice and the land certificate for Gaturi/Weru/1087 and the map showing the subdivided portions of the land. He also produced copies of the awards dated 19/4/2013 of Kshs. 18, 975,000/= and Kshs. 2,262, 490/= for Gaturi/Weru/2935 to Gaturi/Weru/2967 and Gaturi/Weru/2970 respectively. He also produced the form which gave the details of the 2nd Plaintiff for purposes of the electronic funds transfer. He also produced a copy of the valuation report done on Gaturi/Weru/2935 prepared by Agility Valuers Limited.
10. On cross examination, he stated that they were not notified that the 2nd Defendant no longer wished to complete the acquisition of their land for the expansion of the Embu airstrip. He told the court that he had titles for the subdivided portions and added that when a parcel of land is gazetted for compulsory



acquisition, one cannot use that land. He had the authority of the 2nd Plaintiff to give evidence on her behalf.

11. The 2nd Defendant called Fredrick Omondi Ojung'a to give evidence on its behalf. Mr. Ojung'a adopted his witness statement. He stated that the process of acquisition of the land in dispute started in 2010 when the Government undertook the first phase of expanding the Embu airstrip to accommodate NIS. That the Ministry of Transport instructed the 2nd Defendant to acquire the plots needed for the expansion of the airstrip. NLC published Gazette Notice No. 15513 on inquiries into claims for compensation that were to be conducted. The gazette notice listed the Plaintiffs as the registered owners of Gaturi/Weru/1087 earmarked for acquisition.
12. Through the letter dated 5/6/2013, the Commissioner of Lands requested the 2nd Defendant to prepare payment cheques and forward to the Commissioner of Lands for onward transmission to the persons who were to be compensated. He explained that the payment to the Plaintiffs was not effected at the time because the 2nd Defendant had not received the funds for compensation from the Ministry of Transport.
13. Through the letter dated 9/1/2014, the Ministry of Transport informed the 2nd Defendant that the NIS had redesigned the airstrip, which meant that the parcels which were to be acquired for the airstrip including the Plaintiffs' land would no longer be required for the expansion of the Embu airstrip. Following this development, the 2nd Defendant requested NLC to degazette the affected properties to forestall claims for damages, costs and expenses from persons whose land was affected. He contended that it was the Ministry of Transport as the 2nd Defendant's parent ministry to compensate the Plaintiffs given that they issued the instructions for the land acquisition only to change its position while failing to fund the compulsory acquisition from the outset.
14. The 2nd Defendant's witness produced copies of the gazette notice and the letter dated 5/6/2013 from the Ministry of Lands requesting the 2nd Defendant to prepare payment cheques for transmission to the owners based on the awards. He also produced the letter dated 10/6/2013 giving the electronic funds transfer details with an annexure giving the parcels to be acquired and sums payable. The Plaintiffs' names appear on that list. He produced the payment details supplied by the Plaintiffs for payment of compensation dated 22/4/2013. Some internal correspondence of the 2nd Defendant was also tendered in evidence as well as the letter from NLC dated 27/9/2013 to the 2nd Defendant seeking to know the progress of the compulsory acquisition of land.
15. The letter dated 25/9/2013 from the Ministry of Lands to NLC confirmed that the Commissioner of Lands awarded the Plaintiffs Kshs. 21,237,490/= and requested the 2nd Defendant to pay the compensation. The 2nd Defendant responded on 9/10/2013 and clarified that it had not received money from the Ministry of Transport and Infrastructure. The Ministry of Transport wrote to the 2nd Defendant on 9/1/2014 and communicated the change of the original objective of expanding the airstrip following the re-design of the airstrip by NIS.
16. The 2nd Defendant transmitted this information to NLC vide the letters dated 22/1/2014 and 14/7/2014. The letter dated 22/1/2014 stated that the 2nd Defendant had not taken possession of the land in question while requesting NLC to degazette the earlier gazette notice by issuing a notice that the Government had withdrawn the acquisition of land for expansion of the Embu airstrip.
17. On cross examination, Mr. Ojung'a clarified that the gazette notice was dated 2/11/2012 and that as at 2012 the management of the Embu airstrip was under the 2nd Defendant. He stated that the budgetary allocation for the intended acquisition had to be done first. He did not know if NLC approved the compulsory acquisition of the Plaintiff's land. He did not have evidence to show that the compensation



sum of Kshs. 21, 237, 490/= was paid to the Plaintiffs. He had not seen any documents showing degazettement of the parcels in question. He was of the opinion that the Plaintiffs were not entitled to the sum of Kshs. 21, 237, 490/= since the acquisition of their land was never completed. His view was that the Plaintiffs may be entitled to damages to be valued by NLC.

18. On conclusion of the hearing, the court directed parties to file and exchange submissions. Having considered the pleadings, evidence, and submissions, the issues that arise for determination are whether there was compulsory acquisition of the Plaintiffs' land and whether compensation is payable and if so, who bears the responsibility for compensating the Plaintiffs.
19. The right to property is protected under Article 40 of *the Constitution* of Kenya, 2010, which prohibits the State from depriving a person of property except in accordance with the law, and upon prompt payment of just compensation. The *Land Act* governs the procedure for compulsory acquisition in Sections 107 to 132. The court in *Patrick Musimba v National Land Commission & 4 Others* [2016] KEHC 5956 (KLR) summarised the process of compulsory acquisition of land in Kenya as follows:

“In summary, the process of compulsory acquisition now runs as follows;

- i. Under Section 107 of the *Land Act*, the NLC is ordinarily prompted by the national or county government through the Cabinet Secretary or County Executive member respectively. The land must be acquired for a public purpose or in public interest as dictated by Article 40(3) of *the Constitution*. 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. As part of the National Land Commission's due diligence strategy, 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: see Section 108 of the *Land Act*.
- iv. The foregoing process constitutes the preliminary or pre-inquiry stage of the acquisition.
- v. The burden at this stage is then cast upon the National Land Commission and as can be apparent from a methodical reading of Sections 107 through 110 of the *Land Act*, the landowner's role is limited to that of a distant bystander with substantial interest.
- vi. 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.

- vii. 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. The compensation may take either of the two forms prescribed. It could be a monetary award. It could also be land in lieu of the monetary award, if land of equivalent value, is available. Once the award is accepted, it must be promptly paid by the National Land Commission. Where it is not accepted then the payment is to be made into a special compensation account held by the National Land Commission: see Sections 113- 119 of the [Land Act](#).
 - viii. The process is completed by the possession of the land in question being taken by the National Land Commission once payment is made even though the possession may actually be taken before all the procedures are followed through and no compensation has been made. 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](#).
 - ix. If land is so acquired the just compensation is to be paid promptly in full to persons whose interests in land have been determined: See Section 111 of the [Land Act](#). This is in line with the Constitutional requirement under Article 40(3) of [the Constitution](#) that no person shall be deprived of his property of any description unless the acquisition is for a public purpose and subjected to prompt payment in full of just compensation.”
20. The Plaintiffs produced Gazette Notice No. 15513 dated 2/11/ 2012, which declared the government’s intention to acquire the subject parcels of land. It is not in dispute that those parcels of land belong to the Plaintiffs. The purpose of the acquisition was for the expansion of the Embu Airstrip which falls within the meaning of public purpose under Section 2 of the [Land Act](#). An inquiry for compensation claims was held on 6/12/2012 and the 1st Plaintiff, Mr Charles Gatimu presented his claim according to the letter dated 25/9/2013 from the Office of the Senior Deputy Commissioner of Lands (Valuation). Valuation of the land and award was completed and communicated to the Plaintiffs on 19/4/2013. The Plaintiffs accepted the awards and executed a formal acceptance and request for compensation agreement on 22/4/2013. These facts are undisputed.
 21. While the Plaintiffs claim that they surrendered the land and gave vacant possession to the 2nd Defendant in 2013, it is now apparent that the Plaintiffs’ land has never been developed, used, or utilised by the 2nd Defendant from the date of the acquisition. The letters from the 2nd Defendant to NLC dated 22/1/2014 and 14/7/2014 corroborate this position. In those letters, KAA stated that they did not take formal possession of the land and requested for it be degazetted. They stated that the Ministry changed the purpose of the airstrip and there was no need for the land to be acquired any more. The 2nd Defendant offered to indemnify the Commission from any liability arising from the withdrawal of the acquisition.
 22. Although the initial steps of compulsory acquisition were legally followed including gazettelement, valuation, inquiry and the making of awards, the formal taking possession of the suit land under Section 120 of the [Land Act](#) was never completed by the acquiring body. The acquisition process



stalled. No action was taken to de-gazette the affected land nor to notify the Plaintiffs of the aborted acquisition. Compensation was never paid, leaving the land in a legal limbo so to speak.

23. The Plaintiffs' land was indeed taken through the process of compulsory acquisition, and most of the legal steps were followed, even though the process was not completed. The failure by NLC to pay the Plaintiffs or put the land to the intended use for more than ten years means the acquisition of the Plaintiffs' land cannot be considered as lawful. The Plaintiffs were deprived of the use and benefit of their land for the period the land was gazetted which is a violation of their right to property under Article 40 of *the Constitution*.
24. Section 123 of the *Land Act* allows NLC to cancel or withdraw the acquisition of land at any point before taking possession. Where this happens, NLC must assess and pay compensation for any losses, damages, or reasonable costs that affected persons may have suffered or incurred because of the acquisition process.
25. The Plaintiffs' land was subjected to the process of compulsory acquisition. Although the process was not completed, the Plaintiffs surrendered possession and were deprived of the use of their land for more than ten years without compensation. This constitutes a violation of their constitutional right to property and the Plaintiffs are entitled to compensation.
26. Judgment is entered for the Plaintiffs against the Defendants as follows:
 - a. A declaration is issued that the Plaintiffs are the rightful owners of Gaturi/Weru/1087 subdivided into Gaturi/Weru/2935 to Gaturi/Weru/2970;
 - b. Since the acquisition of the suit land for the expansion of the Embu airstrip is no longer feasible, an order is issued directing the 1st Defendant to de-gazette the acquisition of the suit land for the land to revert to the Plaintiffs.
 - c. The Plaintiffs are awarded general damages in the sum of Kshs. 10,000,000/= for loss of use of the land in question for the ten years, to be borne by the 1st and 2nd Defendants jointly and severally.
 - d. On the claim for aggravated and exemplary damages, the reliefs granted including the award of general damages, costs, and the order for de-gazettement of the Plaintiffs' land sufficiently address the violation of the Plaintiffs' constitutional right to property, no separate award for aggravated or exemplary damages is made; and
 - e. The Plaintiffs are awarded the costs of the suit.

DELIVERED VIRTUALLY AT EMBU THIS 2ND DAY OF JULY 2025.

K. BOR

JUDGE

In the presence of: -

Mr. David Musyoka for the Plaintiffs

Ms. R. Vuchocho holding brief for Mr. S. Mutua for the 2nd Defendant

Ms. J. Irungu holding brief for Mr. J. Kiongo for the 3rd Defendant

No appearance for the 1st Defendant

