



Kochipp Agency Limited v National Land Commission & 3 others; Premier Bank Limited (Formerly known as First Community Bank Ltd) (Interested Party) (Environment and Planning Petition E002 of 2024) [2024] KEELC 3762 (KLR) (7 May 2024) (Ruling)

Neutral citation: [2024] KEELC 3762 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND PLANNING PETITION E002 OF 2024**

MD MWANGI, J

MAY 7, 2024

FREEDOM UNDER ARTICLES 1(1)(3), 2(1), 3(1), 10(2)(A)(B)(C) 19(1) 20(1),3(B) (4), 22(1) (2), 22(1) (2), 23(1)(3), 40(3) AND 258(2) OF THE CONSTITUTION OF KENYA, 2010 AND IN THE MATTER OF THE CONSTITUTION OF KENYA (PROTECTION OF RIGHTS AND FUNDAMENTAL FREEDOMS) PRACTICE AND PROCEDURE RULES, 2013

BETWEEN

KOCHIPP AGENCY LIMITED PETITIONER

AND

NATIONAL LAND COMMISSION 1ST RESPONDENT

DUPOTO/DAFUR SETTLEMENT WELFARE SCHEME 2ND RESPONDENT

KENYA COMMERCIAL BANK LIMITED 3RD RESPONDENT

KENYA RAILWAYS CORPORATION 4TH RESPONDENT

AND

PREMIER BANK LIMITED (FORMERLY KNOWN AS FIRST COMMUNITY BANK LTD) INTERESTED PARTY

RULING

Background

1. The Petitioner in this matter, Kochipp Agency Ltd, avers that it is the registered owner of all that property known as L.R. No. 209/11889 measuring 1.0 ha (hereinafter referred to as ‘the suit property’). The Petitioner alleges that sometimes in the month of October, 2023, its directors found out that Kenya Railways Corporation (the 4th Respondent) was constructing a wall which had engulfed within the suit property, denying them access and use of it. They state that they learnt that Kenya



- Railways Corporation had allegedly acquired a parcel of land from the 2nd Respondent (Dupoto/ Darfur Settlement Welfare Scheme), through the 1st Respondent (National Land Commission) by way of compulsory acquisition) purportedly including the suit property without involving and compensating the Petitioner.
2. The Petitioner's case is that the 2nd Respondent's purported takeover of its land and the surrendering it to the 1st Respondent for purposes of compulsory acquisition is a violation of its right to property protected under Article 40 of *the Constitution* of Kenya. The Petitioner avers that it not sold neither has it in any manner relinquished nor parted with its ownership of the suit property to the 2nd Respondent. The Petitioner accuses the National Land Commission (NLC) of depriving it of it property unlawfully and without any compensation.
 3. Amongst the reliefs that the Plaintiff seeks is a declaration that its right to property and protection under Article 40 of *the Constitution* has been violated by the 1st Respondent (NLC) on account of its failure to promptly compensate it on account of compulsory acquisition of its property. Consequently, the Petitioner too prays for an order directing NLC to compensate it for the compulsorily acquired Land.
 4. The 4th Respondent raised a Preliminary Objection against the Petition and the application for interim orders by the Petitioner. The Preliminary Objection by the 4th Respondent which has been supported by the 3rd Respondent challenges the jurisdiction of this Court to adjudicate over the matter filed by the Petitioner by virtue of the provisions of Sections 112 & 133C of the *Land Act*. The 4th Respondent avers that the Petitioner has not exhausted the statutory dispute resolution mechanisms under the *Land Act*. It is the 4th Respondent's position that the Petitioner ought to have lodged the dispute before the Land Acquisition Tribunal and not this court.
 5. I have considered the Preliminary Objection, the submissions filed in support and against the Preliminary Objection, the provisions of the *Land Act* and case Law.
 6. Undoubtedly, the Land Acquisition Tribunal established under the provisions of Section 133A of the *Land Act* has the mandate to hear and determine appeals from the decision of the NLC, in matters relating to the process of Compulsory Acquisition of Land.
 7. The Petitioner in its Petition pleads that it only learnt of the compulsory acquisition of its land when its directors visited the suit property intending to show it to a prospective buyer who had expressed his intention to purchase the suit property, in the month of October, 2023. The Petitioner confirmed the allegations of compulsory acquisition through the Star Newspaper of 22nd January, 2024.
 8. What the Petitioner is saying in short, is that the 1st Respondent, NLC did not involve it in the process of compulsorily acquiring its land. That is why it accuses the NLC of unlawfully depriving it of its property.
 9. The *Land Act* has an elaborate procedure for compulsory acquisition of private Land from the point of submission of the request for acquisition of land to the NLC up to the point of the formal taking of possession of the acquired land. One clear and mandatory requirement in the Law is involvement of the proprietor of the Land in the entire process for purposes of ensuring just compensation. Where that is violated, the proprietor has recourse under the Law. Section 133C of the *Land Act* provides that a person dissatisfied with the decision of the Commission shall within thirty (30) days apply to the Tribunal in the prescribed manner. The Tribunal off course has jurisdiction to extend the time for filing a complaint by a dissatisfied person.
 10. The jurisdiction of this Court in matters compulsory acquisition of Land is largely appellate.



11. This Court therefore lacks the jurisdiction to entertain the Petitioner's dispute as now presented before it at the first instance. The Petitioner has not exhausted the dispute resolution mechanism provide under the Statute. Eboso J in the case of *Giciri Thuo & 4 others -vs- NLC & 6 others* [2021] eKLR upheld the same position.
12. As eloquently explained in the case of *Speaker of the National Assembly -vs- Njenga Karume* [1992] eKLR, where there is a clear procedure for redress of any particular grievance, prescribed under *the Constitution* or Statute, that procedure must be strictly followed.
13. The doctrine of exhaustion was explained by the Court of Appeal in the case of *Geoffrey Muthiga Kabiru & 2 Others -vs- Samuel Munga Henry & 1756 others* (2015) eKLR. The Court expressed itself as follows; -

“It is imperative that where a dispute resolution mechanism exists outside Courts, the same be exhausted before the jurisdiction of the Courts is invoked. Courts ought to be for a of last resort and not the first port of call the moment a storm brews.... The exhaustion doctrine is a sound one and serves the purpose of ensuring that there is a postponement of judicial consideration of matters to ensure that a party is first of all diligent in the protection of his own interest within the mechanisms in place for resolution outside the courts. This accords with article 159 of *the Constitution* which commands courts to encourage alternative means of dispute resolution.”
14. The Court upheld the doctrine as a sound one and expressed the view that Courts ought to be fora of last resort and not the first ports of call any time that a dispute arises.
15. The Supreme Court of Kenya upheld the position in *Bernard Murage vs. Fine Serve Africa Ltd & 3 others* [2015] eKLR.
16. This petition must therefore be struck out for violating the doctrine of exhaustion.
17. I will however, spare the Petitioner the costs of the Petition considering the stage at which the proceedings have been terminated.

It is so ordered.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 7TH DAY OF MAY, 2024.

M.D. MWANGI

JUDGE

In the virtual presence of:

Mr. Oichoe for the Petitioner

Ms. Tusiime for the 4th Respondent

Ms. Wangui for the 3rd Respondent & holding brief for the 2nd Respondent

Mr. Osoro for the 1st Respondent

Yvette: Court Assistant.

