



REPUBLIC OF KENYA



**Mephis Limited v Chief Land Registrar & 4 others (Environment & Land
Petition 6 of 2023) [2024] KEELC 6721 (KLR) (16 October 2024) (Ruling)**

Neutral citation: [2024] KEELC 6721 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT & LAND PETITION 6 OF 2023
FM NJOROGE, J
OCTOBER 16, 2024**

BETWEEN

MEPHIS LIMITED PETITIONER

AND

THE CHIEF LAND REGISTRAR 1ST RESPONDENT

THE CABINET SECRETARY FOR LANDS 2ND RESPONDENT

**THE DIRECTOR OF LAND ADJUDICATION AND SETTLEMENT 3RD
RESPONDENT**

THE HON ATTORNEY GENERAL 4TH RESPONDENT

THE NATIONAL LAND COMMISSION 5TH RESPONDENT

RULING

1. For determination is the Preliminary Objection by the 1st-4th Respondents dated May 1, 2024 brought under the following grounds:
 1. This Honourable Court lacks jurisdiction to hear and determine the Petition herein as its is *forum non conveniens*.
 2. This Petition has been filed prematurely without exhausting the internal mechanisms under the [Land Adjudication Act](#) and the [Land Act](#) No. 6 of 2012.
 3. The Petition herein offends the provisions of Section 13 of the [Land Adjudication Act](#), Cap 284 of the Laws of Kenya.
 4. The [Land Adjudication Act](#) provides for elaborate procedures and the for a for handling disputes that arise during the adjudication process.



5. That this Honourable court has only appellate jurisdiction on issues touching on land adjudication and compulsory acquisition.

1 - 4th Respondents' Submissions.

2. Counsel identified two issues for determination: whether the Preliminary Objection is proper and whether the preliminary Objection is merited. He submitted that the grounds raised in the preliminary objection challenge the jurisdiction of this Honourable court hence the objection is proper and the same if successful will lead to dismissal of the suit.
3. On whether the preliminary objection is merited, he submitted that the same raises points of law, to wit, that the Petition is not properly instituted before this Honourable court. According to him, where there exist other suitable fora for resolving legal issues then courts need to refrain from entertaining suits that would otherwise be dealt with in the other fora. He relied on the case of *Fortis Tower Management Ltd & another v Trendmark Computers Limited* (2018) eKLR. He submitted that the land issues raised in the Petition to wit adjudication and compulsory acquisition have very distinct processes with specified guidelines preferred in handling them governed by their own separate statute.
4. It was further submitted that the *Land Act* governs the process of Compulsory Land Acquisition in Kenya and mandates at Section 111(1) that the National Land Commission shall regulate assessment of such just compensation and to prepare the award for compensation of such land that has been acquired.
5. He relied on the case of *Giciri Thuo & 5 Others v National Land Commission & 4 Others* (2022) eKLR stating that Part V111 and Part V111A of the *Land Act* provides that disputes relating to proprietary and claims for the compensation by persons interested in land which is the subject of compulsory acquisition are to be adjudicated by the National Land Commission through the mechanism of inquiry contemplated under Section 112.
6. To add emphasis, he also relied on the cases of *Rose Kanini M'atheru & another v District Land Adjudication & Settlement, Karama Adjudication Section & 2 others* (2018) eKLR and that of *Priscillar Mino Ngũnyu v James Maweu Mutungi & 2 others* (2020) eKLR, submitting that the Petitioner has by passed the available channels for resolving its disputes. He further directed the attention of the court to the case of *Speaker of the National Assembly v Karume* (1992) eKLR.

Petitioner's Submissions.

7. The Petitioner on the other hand filed submissions dated June 12, 2024. Counsel identified two issues for determination: - whether the court lacks jurisdiction because the petitioner did not follow the provisions in the *Land Act* which govern compulsory acquisition and whether the court lacks jurisdiction because the petitioner did not exhaust the dispute resolution procedure relating to land acquisition.
8. On the 1st issue for determination, counsel submitted that there was no process of compulsory acquisition in this case and there was no decision of the National Land Commission capable of being appealed against at the Land Acquisition Tribunal; thus, in this case, there is no decision of NLC made under the *Land Act* that can be subjected to an appeal at that Tribunal.
9. He submitted that the petitioner has expressly pleaded that the legal procedure for compulsory acquisition was not followed and therefore there was no compulsory acquisition as known in law; that however, the Petitioner is asking the court to find that although the procedure was not followed, effectively there was constructive compulsory acquisition when the Petitioner's land was taken away



and given to the squatters. He relied on the case of *Attorney General v Zinj Limited* (Petition 1 of 2020) (2021) KESC 23 (KLR) (Civ) and that of *Barnabas East Africa v County Government of Mombasa & 2 others* (Constitutional Petition 29 of 2022).

10. On the 2nd issue for determination, counsel submitted that the Attorney General contends that the petitioner ought to have invoked the appellate procedure for in Section 13 of the *Land Adjudication Act* which section is clear that what triggers the appellate procedure therein is publication of Notice under Section 5 of the *Land Adjudication Act*. He also submitted that a preliminary objection is normally raised on the foundation that the facts as pleaded are correct and in this case, the facts as pleaded by the petitioner do not show that there was a notice published under Section 5 of the *Land Adjudication Act*. According to him, such a notice does not exist and it has not been exhibited by any of the parties to this case.
11. He further submitted that although the Petitioner has pleaded that the suit property was declared as an adjudication section, such declaration was illegal because the adjudication officer did not publish a notice as required by Section 5 (1) (a) of the *Land Adjudication Act*.
12. He finally submitted that even assuming that the alternative dispute resolution mechanisms alluded to by the Attorney General were available to the Petitioner, the failure to explore alternative dispute resolution mechanisms is not a bar to filing a constitutional petition. For this proposition he relied on the case of *Mathbatani Limited v Commissioner of Lands & 5 others* (2013) eKLR and that of *Ravaspaul Kyalo Mutisya v National Land Commission* (2022) eKLR.

Analysis and Determination.

13. I have considered the preliminary objection and the submissions by both parties and in my view what this court is being called to determine is whether this court has jurisdiction to determine this Petition.
14. The definition of a preliminary objection is well set out in the case of *Mukisa Biscuit Manufacturing Co. Ltd vs West End Distributors Ltd* (1969) EA 696, as follows:

“So far as I am aware, a preliminary objection consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings, and which if argued as a preliminary point may dispose of the suit.”

15. The *Land Adjudication Act* and the *Land Consolidation Act* capture the steps of land adjudication from the start when a declaration is made up to the time of finalization or close of the register of adjudication. The aforementioned statutes also do provide dispute resolution mechanisms which need to be followed in case of any grievance arising during the process of adjudication.
16. In the case of *Julius Kailikia Laaru v Peter Kaigera Laaru* [2020] eKLR, the court held as follows in relation to the jurisdiction of the courts in land adjudication related disputes:

“It doesn’t follow that all disputes arising during the adjudication process must or ought to have been dealt with by the adjudication bodies. A court of law has to analyze the claim before it to see if the same falls under the dispute resolution mechanisms provided for under the adjudication statutes mainly The *Land Consolidation Act* Cap 283 and The *Land Adjudication Act* Cap 284 Laws of Kenya. In order to have a better perspective of the issue, one must fall back on the preamble of the two statutes...

What emerges from the above statutes is that adjudication process is the bridge albeit long and winding in which land held in a communal tenure system transitions to individual



tenure system through the process of ascertainment of rights and interests in land, recording of such rights and interests and demarcation of the land. The dispute resolution mechanisms provided for under the two aforementioned statutes is meant to shepherd this process of ascertaining the rights and interests of claimants, before crystallization of the same under the [Land Registration Act](#) (formerly the Registered Land Act cap 300 repealed).”

17. The procedure for compulsory acquisition is provided for under Section 107 to 133 of the [Land Act](#) and the provisions require that the National Land Commission give notice of acquisition of land and thereafter issue an award of compensation.
18. In the present Petition, there was no decision of the National Land Commission. As it is no legal compulsory acquisition process as is required by the [Land Act](#) was commenced and as such, the petitioner could not invoke the dispute resolution mechanism provided for under the law relating to compulsory acquisition.
19. The cause of action, according to the petitioner is that the Government of Kenya and the respondents herein declared the suit property an adjudication section, not for the benefit of the petitioner but private individuals, squatters, and without any *quid pro quo* in the form of compensation. The petitioner maintains that the property was not available for allocation to any other person as it owned the title, and the said declaration of an adjudication section over the suit property breached its constitutional rights hence the suit. It would be strange and indeed improper were the petitioner abandon an available remedial process envisaged under the [constitution](#) for redress in respect of perceived breach of constitutional rights in favour of seeking redress under the [Land Adjudication Act](#) while it was not his rights were under adjudication in the process commenced under that Act. In view of the petitioner’s claim of right to registered title over the affected land, the acts of the respondents could attract only either a suit under plaint or a constitutional petition.
19. The upshot of the foregoing is that this court is persuaded that the Preliminary Objection raised by the Respondents cannot succeed and the same is hereby dismissed.
20. To facilitate the expeditious disposal of this petition, it is hereby ordered as follows:
 - a. The respondents who have not filed and served their responses to the petition shall do so within 21 days from today;
 - b. The petition shall be mentioned on 20/11/2024 for directions as to hearing.

RULING DATED, SIGNED AND DELIVERED AT MALINDI ON THIS 16TH DAY OF OCTOBER 2024.

MWANGI NJOROGE

JUDGE, ELC MALINDI

