Hassanali v National Land Commission & another (Environment & Land Case 180 of 2021) [2024] KEELC 13511 (KLR) (4 December 2024) (Judgment)

Neutral citation: [2024] KEELC 13511 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MOMBASA

ENVIRONMENT & LAND CASE 180 OF 2021

SM KIBUNJA, J

DECEMBER 4, 2024

BETWEEN

KARIM MOHAMED HASSANALI ..... PLAINTIFF

AND

NATIONAL LAND COMMISSION ..... 1ST DEFENDANT

KENYA NATIONAL HIGHWAYS AUTHORITY ..... 2ND DEFENDANT

JUDGMENT

1. The plaintiff commenced this suit through the plaint dated the 3rd July 2021 and filed on 30th August 2021, seeking for judgement against the defendants severally and jointly for Kshs.1,214,000,000, interest at banking rates of 13% from January 2015 until payment in full and costs. The plaintiff avers inter alia that the sum he is claiming is for compensation upon compulsory possession of 16.806 hectares excised from L.R. No.MN/V/486, in which he was one of the registered and beneficial owners. That 1st defendant had on or about 18th March 2014 under Kenya Gazette No. 1796 of 21st March 2014 published the intention to compulsorily acquire on behalf of the 2nd defendant 16.2623 hectares from LR. No. MN/V/486 for construction of Mombasa Southern By-pass and Kipevu Terminal Link Road. That in January 2015, the defendants compulsorily took possession of the 16.806 hectares from LR. No. MN/V/486, that was valued at Kshs.1,214,000,000 as at 30th June 2017. That the defendants did not pay just compensation upon taking over the said land thereby violating Article 40(3)(b)(i) of *the Constitution* and section 115 of the *Land Act*. That under section 117(1) of the *Land Act* the Kshs.1,214,000,000 attracts interest at prevailing bank rates from January 2015 till payment in full. That the prevailing bank interest rates between January 2014 to 2nd June 2021 was 13%.

2. The 1st defendant filed their statement of defence dated the 17th April 2023, opposing the plaintiff's claim. The 1st defendant inter alia averred that the plaintiff's claim if any is for Kshs.137,521,600 that will be paid after all outstanding ownership disputes are resolved, and that interest can only start to

accrue from the date of issuance of notice to take possession. The 1st defendant disputed the jurisdiction of the court.

3. The 2nd defendant opposed the plaintiff's claim through the statement of defence dated the 28th December 2021, inter alia averring that when it was undertaking the construction of Mombasa Port Area Road Development project, part of the parcel of land MN/V/486, subject matter of this suit was gazetted for compulsory acquisition. That the portion of the said land affected was 16.2623 hectares and not 16,806 hectares as alleged. That the affected property was inspected, valued and an award issued by the 1st defendant. That under the comprehensive compensation schedule forwarded by the 1st defendant to the 2nd defendant dated the 5th September 2014, the suit property was listed as "land whose ownership was not established." That the said land was subject to private dispute between the plaintiff and others in Mombasa ELC No. 331 of 2010, that was decided in 2019 stating that some of the claimants in that suit were owners of the suit property by virtue of adverse possession. That the exercise to inquire, inspect and determine the compensation payable to the plaintiff was carried out by the 1st defendant in exercise of its powers under Article 67 of *the Constitution*. That the 1st defendant had issued a public notice for review of grants and disposition of public land dated 7th August 2015 where it reportedly received numerous complaints and the suit property was listed as one of the properties to be reviewed. That in the event of a boundary dispute between the plaintiff's parcel and the acquired portion, the parties should pursuant to section 18(2) of *Land Registration Act*, appear before the District Land Registrar for determination and fixing the same. That the 2nd defendant disputed the valuation done by the plaintiff's private valuer as that mandate rests with 1st defendant under section 113 of *Land Act*. That the 1st defendant had made the determination of the value of compensation which the 2nd defendant forwarded to it. That as the 2nd defendant had complied as required, this suit should be dismissed with costs.

4. The hearing commenced on the 19th April 2023 when Karim Mohamed Hassanali, the plaintiff, testified as PW1. He adopted the contents of his revised witness statement filed on the 15th July 2022, as his evidence in chief. It was his testimony that his land is 189 acres or 72.5 hectares, and has a slaughterhouse and about 20 to 30 heads of cattle on it. That the 1st defendant gazetted compulsory acquisition of 16.2623 hectares, about 40.719 acres, of his land, and though the defendants took possession of the said land, the 1st defendant has never served him with an award or compensated him. That the land that the defendants acquired is valued about Kshs.30million per acre making a total of Kshs.1,214,000,000 from the valuation done on his behalf. That in Mombasa ELC No. 331 of 2010, Hamisi Beja & 18 Others sued him and another claiming the suit land under adverse possession and were awarded a total of 26 acres out of 189 acres leaving him with 163 acres in the judgement delivered on 15th February 2019. The portion of the suit land compulsorily acquired by the defendants was on a vacant part of the land that is separate from that awarded to the parties in that other suit, and the subdivision scheme has been done and submitted for approval. The witness addressed the court on the awards made in ELC Petition Nos. 51 to 55 of 2019 that was decided on 14th November 2022, and relates to parcels of land in the neighbourhood of the suit land. He prayed for compensation as prayed and sought for interest and costs. In cross-examination by Mr. Mbuthia Advocate for the 1st defendant, PW1 stated that the land is registered in his name and that of his brother, Amin Mohamed Hassanali. That they are yet to transfer the 26 acres to the people it was awarded to in the judgement in ELC No. 331 of 2010. That the 2nd defendant took possession of the acquired portion of his land in 2017, even though it never served him with notice of taking possession. That the 13% interest rate he is seeking was the one for overdrafts in 2016, and has been ranging between that figure and 14%. That he did not attend the public inquiry of 13th May 2014 because he did not get to know of the acquisition notice, until 2017 when the 2nd defendant started constructing the road on the

subject portion of his land. He instructed Knight Frank valuers in 2017 to value the said land. That no award has ever been made to him for the land taken and he did not know that it has been with the 1st defendant since 2015, as no communication was ever made to him. That the portion of his land gazetted for compulsory acquisition was 16.2623 hectares while what his valuer valued was 16.806 hectares. In cross-examination by Mr. Mudavadi for the 2nd defendant, PW1 stated that though his land was acquired by the 1st defendant, it was the 2nd defendant that took possession of it and constructed a road, without giving him any notice. In re-examination, PW1 stated that the difference in the gazetted and valued acreage is only one acre. That no government office, including the defendants, has ever asked him to present the title documents for the land taken by the 2nd defendant. That the land awarded to the plaintiffs in ELC No. 331 of 2010 has no relationship with the portion taken over by the 2nd defendant.

5. The plaintiff also called Sammy Meshack Mukala, a registered valuer with Knight Frank, and Dr. Salome Ludenyi, formerly Director Valuation and Taxation with 1st defendant, who testified as PW2 and PW3 respectively. PW2 told the court how they valued the suit land measuring 41.28 acres at Kshs.1,214,000,000 using the market approach and comparing with other properties. In cross-examination, PW2 stated that the size of the land they valued was 16.806 hectares that reflected the acreage in the gazette notices of 2014 and 2015. That valuation for compulsory acquisition is done after the land is gazetted and that their valuation was done in 2017. That their valuation did not include any developments on the land, and the value could not have been affected by the fact that a road was being constructed through the land. In re-examination, PW2 said they calculated the value at Kshs.29,200,000 per acre. PW3 told the court that she is the one who valued land MN/V/5169 which is about two (2) kilometres from the suit property, that she knew was among those being affected by the road construction and the SGR, and that they came to a value of Kshs.80million per acre. During cross-examination, PW3 stated that though the valuation she did was dated 24th May 2018, they had inspected the land in 2015. That valuation for compulsory acquisitions is done after gazettement, but there is no timeframe within which it is to be done, and it could take even two (2) years. That any development done on land subject matter of compulsory acquisition after gazettement is not considered during valuation.

6. The 2nd defendant called Milkah Muendo, Land Suveyor with the 2nd defendant, who testified as DW1. The witness adopted the contents of her witness statement dated the 28th February 2021, as her evidence in chief and produced the documents filed on 28th December 2021. DW1 confirmed that the portion of 16.2623 hectares or 40.17 acres of the suit land was among the parcels of land gazetted for compulsory acquisition. That the 2nd defendant later received the schedule for payments from the 1st defendant under letter dated 5th September 2014, seeking for the money for compensation to be forwarded to the 1st defendant. That in respect of the suit property the value for compensation given was Kshs.137,521,600, but the name of the person to be paid was not indicated. That the 2nd defendant forwarded the amount tabulated in the schedule totalling Kshs.798,918,358.50 to the 1st defendant on the 20th May 2015. That the 2nd defendant do not owe the 1st defendant any compensation money relating to the suit property. That the properties covered under the schedule of payment of 5th September 2014 had been valued by then, and those values do not change. That she had not seen the valuation of the suit property dated 24th May 2018. During cross-examination, DW1 stated that neither the 1st defendant nor the 2nd defendant had filed with the court any valuation report for the suit property or any other property. That both the gazette notices of 2014 and 2015 carried the name of the owner of the suit property. She agreed that there was no copy of the award made to the plaintiff by the 1st defendant in the documents filed by both defendants, or evidence that the award was served upon the plaintiff. That as a surveyor, she does not participate in valuations of land for compulsory acquisitions. She agreed that though in her statement she had mentioned about complaints received

on legality of various grants, she had not availed any documented complaint affecting the suit property. In re-examination DW1 stated that she is not aware of MN/V/5269 being compulsorily acquired for the 2nd defendant's use.

7. The record shows that at the conclusion of DW1's testimony, Mr. Mudavadi, learned counsel for the 2nd defendant, informed the court that Mr. Mbuthia advocate for the 1st defendant had been unable to join the hearing because he had reportedly been mugged and robbed of his phone. The counsel requested for adjournment and the recall of DW1 to be cross-examined by Mr. Mbuthia, learned counsel for the 1st defendant. Mr. Ndegwa for the plaintiff did not oppose the application and the court adjourned the hearing and fixed it for 10th April 2024, virtually. That date became Idd ul-Fitr holiday, and the record show the suit was mentioned the next day, 11th April 2024, and hearing rescheduled to 30th May 2024 by consent. On that date, all counsel were present during the virtual mention and the hearing was confirmed for 11.00am. The court called the suit at 11.50 am but only counsel for the plaintiff and 2nd defendants were in court. Mr. Mudavadi for 2nd defendant informed the court that Mr. Mbuthia for the 1st defendant was in Nairobi and wanted to join virtually, but the counsel for the plaintiff objected. The court considered the submissions by counsel present and made an order that the 1st defendant was taken as absent because the court had directed the hearing be physical. The court proceeded to close the 1st defendant's case.

8. Directions were given on filing and exchanging of submissions. I have perused the physical record and CTS and only the learned counsel for the plaintiff has filed their submissions dated the 11th July 2024, that the court has considered.

9. The following are the issues for the court's determinations in this suit:

    a. Whether this court is with jurisdiction in this suit.

    b. What portion/acreage of the suit land was taken over/compulsorily acquired by the defendants, and whether the plaintiff had registered and beneficial interest over the said portion.

    c. Whether the defendants served the plaintiff with an award for the portion of the suit property compulsorily acquired/taken over by the defendants.

    d. Whether the defendants have paid just compensation for the portion of the suit property they took over/compulsorily acquired.

    e. What was the market value of the portion of the suit property at the time it was compulsorily acquired/taken over by the defendants.

    f. Whether the plaintiff is entitled to interest and at what percentage.

    g. Who pays the costs?

10. The court has carefully considered the parties' pleadings, oral and documentary evidence presented by PW1 to PW3 and DW1, submissions by the learned counsel, superior courts decisions cited thereon, and come to the following findings:

    a. The objection to jurisdiction had been raised by the 1st defendant through its statement of defence. The 1st defendant did not however present any witnesses in support of its defence and the averments in the statement remains mere allegations. Nevertheless, it is important to deal with this issue as it is of paramount importance, because without jurisdiction, the court should

as it were down its tools, as was held in the celebrated Court of Appeal case of Owners of Motor Vessel "Lilian S" versus Caltex Oil (Kenya) Ltd [1989], eKLR.

b. This suit was evidently filed on 30th August 2021, through the plaint dated the 3rd July 2021, while Land Acquisition Tribunal was operationalised in 7th September 2023, vide gazette notice No. 11840 of 8th September 2023. In the case of Ravaspaul Kyalo Mutisya versus National Land Commission [2022] eKLR, the court held that:

> " Unfortunately, it appears that the Land Acquisition Tribunal is yet to be established and be fully operational. The right to access court in a case of dispute relating to compulsory acquisition of land is a constitutional right under Article 40(3)(ii) which allows any person who has interest in, or right over, the property to be acquired a right of access to the court of law. Section 128 of the *Land Act*, 2012 provides that any dispute arising out of any matter provided for under this Act may be referred to the Land and Environment Court for determination. It is the courts view that lack of an operational Land Acquisition Tribunal does not limit the Appellant's right of access to the courts and I find that the dispute as filed is properly presented."

And in the case of Caroline Wambui Ndirangu versus Nation Media Group Limited & Another Milimani HCCCC No. E149 of 2020, the court similarly held that:

> "…..at the time the Data Protection Act had not neen enacted until 2019, was assented to on 25th November 2019, but was not operationalized until 14th January 2021, when the Data Commissioner was appointed..... Without the setup of the office of the Data Commissioner and appointment and registration of its Data Controllers and Processors, it remained a skeleton. A litigant would as a result not be held back from filing a suit in a court with competent jurisdiction for failure by the Cabinet Secretary who had the mandate to appoint the Data Commissioner....at the time the instant suit was filed, there was no alternative remedy where the plaintiff would have sought remedy other than at the High Court under its inherent jurisdiction."

I am in full agreement with the positions taken in the above two decisions that where the statutory process prescribed for dispute resolution has not been operationalized, a litigant is not without a remedy, as he should approach the appropriate court with jurisdiction in the matter for remedy.

c. The learned counsel for the plaintiff has inter alia submitted that even if the Land Acquisition Tribunal was up and running at the time of filing this suit, the plaintiff would still have come to this court because section 133C(1) of the *Land Act*, is applicable only where the plaintiff has been served with notice of intention to acquire, notice of inquiry/hearing, notice of award/ decision, notice of taking possession, or notice of any decision that one could challenge before the Tribunal under section 133C(1), within 30 days set in section 133C(2). In this suit, the plaintiff testified that no notices of inquiry or award or taking possession or any other decision was ever served upon him. That he only got to know of the acquisition of his land when he saw the 2nd defendant already on the land going on with its construction in 2017. The plaintiff further testified that he wrote to the 1st defendant, through his then advocates, the letter dated 16th July 2019, that was produced as exhibit, asking for information on when the award was made and there was no response received. The plaintiff's contention was not rebutted as none

of the defendants filed copies of any of the above mentioned notices that was served by either of them or both upon him. Indeed, in her evidence in court, DW1 confirmed that no such notices had been filed by the defendants in court.

d. The court is in agreement with the plaintiff's submissions that even if the Land Acquisition Tribunal was operational at the time this suit was filed, the plaintiff would have been unable to approach it within 30 days of the decision as required under section 133C, without such notices and or a decision by the 1st defendant having been communicated to him first. In the case of Nicholus versus Attorney General & 7 Others; National Environment Complaints Committee & 5 Others (Interested Parties) [2023] KESC 113 (KLR) the Supreme Court held that:

> "...availability of an alternative remedy does not necessarily bar an individual from seeking relief..... If the alternative remedy is deemed inadequate in addressing the issue at hand, then the court is not adequate or effective .....there is nothing that therefore bars the appellant from filing a claim before the ELC..... The ELC was thereafter obligated to interrogate his claims on merit and render a determination."

Also in the case of Kamau versus Kenya Accreditation Service [2021] KEELRC 8 (KLR), the court held that:

> "The question that arises is whether the said administrative dispute resolution mechanism ..... is sufficient and adequate forum for resolving the dispute between the parties herein.....the PSC is not sufficient and adequate forum to resolve the instant dispute .....there is no decision by Board which is capable of being appealed to the PSC.....the court has jurisdiction to entertain the same, notwithstanding the existence of the said internal appeal mechanism."

Having considered the facts presented, the court finds that the plaintiff's option of a legal forum to seek redress was under the prevailing circumstances, through this court, which is indeed with jurisdiction.

e. The evidence presented by the plaintiff and 2nd defendant is in agreement that the 1st defendant gazetted the intention to compulsorily acquire 16.2623 hectares of MN/V/486, the suit property, in 2014 and that the 2nd defendant indeed took over the said land and constructed its road infrastructure on it in 2017. Though as held in (c) above no notice of inquiry/hearing, notice of award/decision, notice of taking possession, or notice of any decision was served or communicated formally upon the plaintiff, there is no evidence tendered by the defendants to challenge the plaintiff's position that they indeed took over in 2017 the land they had gazetted to compulsorily acquire from the plaintiff in 2014. The only contention is on the acreage actually taken and the compensation payable thereof. The plaintiff contends through his pleadings and evidence of PW1 to PW3 that though the portion gazetted for acquisition was 16.2623 hectares, the acreage actually taken was 16.806 hectares valued Kshs.1,214,000,000 that he seeks through this suit. The plaintiff called PW2, a registered valuer with Kinight Frank, who told the court how they valued the portion of the suit land taken for road construction infrastructures, measuring 41.28 acres (16.806 hectares) at Kshs.1,214,000,000 using the market approach and comparing it with other properties. It was his testimony that size of the land was as reflected in the gazette notices of 2014 and 2015. That valuation for compulsory acquisition is done after the land is gazetted and that their valuation was done in 2017. That their valuation did not include any developments on the land, and the value could

not have been affected by the fact that a road was being constructed through the land. He put the value per acre of the suit land at Kshs.29,200,000. PW2 proceeded to produce the valuation report as exhibit.

f. PW3, then working with the 1st defendant told the court of a valuation she carried on land compulsorily acquired from MN/V/5169, that is about two (2) Kilometres from the suit property, at the time in question and confirmed they settled on a value of Kshs.80million per acre. The defendants' position through their pleadings and evidence of DW1 is that the acreage was 16.2523 hectares valued Kshs.137,521,600. The defendants have however not tendered any survey and or valuation reports to the court to counter the plaintiff's evidence.

g. The gazette notices of 2014 filed by the plaintiff show the acreage of the land that was gazetted by the 1st defendant as 16.2623 hectares. That is the acreage the defendants by their pleadings and evidence of DW1 confirmed was acquired out of the plaintiff's land. Section 118(1) of the *Land Act* requires that "If part of the land comprised in documents of title has been acquired, the Commission shall, as soon as practicable, cause a final survey to be made of all the land acquired." There is however no evidence adduced by the defendants to confirm that the 1st defendant complied with that mandatory provision of the law. Further section 118(2) of the said Act required of the 1st defendant to cause title documents to be issued for the portion acquired as well as the residual portion, but again there is no evidence to show this was ever done. If anything, the testimony of PW1 to the effect that he is still holding title for the whole parcel, which he produced as exhibit, is uncontroverted by the defendants. This means the section of the road infrastructure that was put up on the 16.2623 hectares of MN/V/486 taken over by the 1st defendant, with government resources, is on land still privately registered, contrary to the expectation of section 118(2) of the Act.

h. Section 121(1) of the *Land Act* requires that "If the documents evidencing title to the land acquired have not been previously delivered, the Commission shall, in writing, require the person having possession of the documents of title to deliver them to the Registrar, and thereupon that person shall forthwith deliver the documents to the Registrar." The plaintiff testified he has not been asked to surrender the title document by the defendants for excision of the acquired portion of his land though the 2nd defendant has already erected a roundabout and flyover road infrastructure on the land.

i. It follows therefore that the failure by the 1st defendant to follow the laid down procedure in compulsory acquisition of the plaintiff's land, including the failure to serve the statutorily required notices upon the plaintiff, made the process disorganised and pedestrian, and not in conformity with the constitutional protection of rights to property under Article 40 of *the Constitution* and provisions on compulsory acquisition in Part V111 of the *Land Act* No. 6 of 2012. The process the 1st defendant used to acquire the plaintiff's land, the take over and use by the 2nd defendant fell short of adherence to the Constitutional and statutory procedures prescribed, and was therefore unlawful. The Supreme Court addressed such an acquisition in the case of Attorney General versus Zinj Limited [2021] KESC 23 (KLR) held that:

> "....such action could not be regarded as "a compulsory acquisition" as it was done contrary to *the Constitution* and the law. The acquisition was "compulsory" only because the Government used coercive powers to deprive the respondent of its property in disregard of *the Constitution*. However, such governmental action cannot be regarded as "a compulsory acquisition" as known to law. It was simply a

brazen and an unlawful deprivation of the respondent's right to property, for which just recompense was awarded by the trial court."

From the foregoing, the court finds the plaintiff is entitled to just compensation for the portion of the suit land that was unlawfully acquired by the 1st defendant, and taken over by the 2nd defendant, and on which a road infrastructure has already been constructed.

j. Though the defendants appeared through their pleadings and evidence of DW1 to suggest that there were disputes/complaints over the ownership of the suit property, there was not a single documented or verified complaint or dispute presented to the court. On the other hand, the plaintiff explained that the 26 acres awarded to the litigants in the judgement delivered on 15th February 2019, in Mombasa ELC No. 331 of 2010, Hamisi Beja & 18 Others, who had sued him and his brother claiming the suit land under adverse possession, will leave him with 163 acres out of the 189 acres. He added that the portion of the suit land compulsorily acquired by the defendants was on a vacant part of the land that is separate from that awarded to the parties in that other suit, and the subdivision scheme has been done and submitted for approval. That evidence has not been controverted by the defendants in any way, and the court has no reasons not to believe it. In any case, the relevant gazette notices by the 1st defendant Nos. 405 of 24th January 2014 and 1796 of 21st March 2014 that were produced by the plaintiff as exhibits and not challenged or rebutted carried the name of the plaintiff as the owner of the suit property.

k. Going to the acreage of the plaintiff's land that has been proved to have been actually acquired out of MN/V/486, the plaintiff has insisted it was 16.806 hectares. That is the acreage of the land PW2 valued at Kshs.1,214,000,000. The defendants pleadings and evidence of DW1 recognised only 16.2623 hectares as gazetted in the gazette notices of 2014 detailed above, that the plaintiff has produced as exhibit. The plaintiff has placed reliance on the gazette notice No. 141 of 18th December 2015 in which he alleged that under entry number 68 at page 2982 the 1st defendant had indicated intention to acquire an additional 0.5441 hectares (1.345 acres) of the suit land. That gazette notice did not form part of the exhibits produced by the plaintiff, and as that portion is disputed by the defendants through their pleadings and evidence of DW1, then the court will not consider it. The value for 40.719 acres at Kshs29,200,000 per acre comes to Kshs1,188,994,800. The 15% disturbance comes to Kshs.178,349,220. The total of the two values comes to Kshs1,367,344,020 which is more than what the Plaintiffs seeks. The court will retain the amount he has pleaded in the plaint.

l. Having come to the finding that the plaintiff is entitled to be paid a just compensation for the 16.2623 hectares (40.719 acres), that was gazetted for compulsory acquisition by the 1st defendant in early 2014 and taken over by the 2nd defendant for road infrastructural development in 2017, the next issue to determine is its value. The plaintiff has through his pleadings and evidence asked for Kshs.1,214,000,000 and relied on the valuation done by PW2, a registered valuer, who stated one acre was about Kshs.29,200,000. The plaintiff also called PW3, a valuer formerly working for the 1st defendant, who vouched for the reasonableness of that value, pointing out that she had done valuation on MN/V/5169 that is about two (2) Kilometres away from the suit land and had adopted a value of Kshs.80milliom per acre. The valuation by PW2 appears reasonable.

m. The defendants only referred to the schedule of payment prepared by the 1st defendant and forwarded to the 2nd defendant asking for the amount therein to be forwarded for settlement. The said schedule of payments indicated the amount payable for the suit property was Kshs.137,521,600. No copy of the valuation or award containing that figure was filed and

produced as exhibit to the court in support. There was no valuation report presented by the defendants to challenge the figures presented by the plaintiff and his witnesses. The schedule of payments is not a substitute for valuation report, and I therefore find the plaintiff valuation is unrebutted or controverted. It is therefore taken as a reflection of a just and reasonable compensation for the land taken from the plaintiff by the defendants and is adopted by the court.

n. Under section 117(1) of the *Land Act* [Revised 2015], the interest rate applicable is "the prevailing bank rates from the time of taking possession until the time of payment." The plaintiff sought for interest rate of 13% which in his evidence he confirmed was the one prevailing between 2015 to 2017. The defendants have not challenged that interest rate by availing any evidence to the contrary. Though the plaintiff claimed the interest rate should start in 2015, his evidence in court was that he got to know of the acquisition in 2017 when the 2nd defendant took over the land and started construction. In the absence of any documentary evidence that supports that the taking over was in 2015, the court will confirm 2017 as the year the 16.2623 hectares of the plaintiff land was taken over by the 2nd defendant. The court will therefore grant interest rate at 13% to start running from January 2017 until payment.

o. Under the provisions of section 27 of *Civil Procedure Act* chapter 21 of Laws of Kenya, costs follow the event, unless where for a reasonable cause the court orders otherwise. In this case, I find no good reason to go against that general edict of the law.

11. In view of the above conclusions on the above issues for determinations, the court finds the plaintiff has successfully proved his claim to the level required by the law, and judgement is entered in his favour and against the defendants jointly and severally as follows:

a. Payment of Kshs.1,214,000,000, being the just compensation for the 16.2623 hectares from MN/V/486, suit property, taken over by the 2nd defendant for road infrastructural development in 2017, without prompt payment.

b. Interest at 13% from January 2017, when the 2nd defendant took over the suit land, until payment in full.

c. The plaintiff is awarded costs.

Orders accordingly.

DATED, SIGNED AND VIRTUALLY DELIVERED ON THIS 4TH DAY OF DECEMBER 2024.

S. M. KIBUNJA, J.

ELC MOMBASA.

In The Presence Of:

Plaintiff : Mr. Ndegwa

Defendants : M/s Mbuthia For 1St Defendant

M/s Miriti For Mudavadi For 2nd Defendant

Leakey – Court Assistant.

S. M. KIBUNJA, J.

ELC MOMBASA.