



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT MOMBASA**

**ELC PET NO 209 OF 15**

**GEYSER INTERNATIONAL ASSETS.....PETITIONER**

**VERSUS**

**THE AG AND 3 OTHERS.....RESPONDENTS**

**RULING**

1. This ruling is in respect of the 2<sup>nd</sup> -4<sup>th</sup> Respondents' Preliminary Objection dated 21/10/2015 and Supplementary Preliminary Objection dated 20/2/2019 that the Petition does not raise any bona fide constitutional issues. That this court does not have jurisdiction to hear and determine this dispute to the extent that it is challenging the compulsory acquisition of land by the National Land Commission under Part VIII of the Land Act No. 6 of 2012.

2. The 2<sup>nd</sup> – 4<sup>th</sup> Respondents submitted that the pleaded dispute of debt collection or enforcement of contract with the government is an ordinary dispute that does not merit the exercise of the constitutional jurisdiction of the Environment and Land Court sitting as a constitutional Court. That it is trite law that the dispute resolution under statute cannot be sidelined. The 2<sup>nd</sup> – 4<sup>th</sup> Respondents further submitted that the dispute for recovery of a debt does not fall within the jurisdiction of this court exercising its ordinary jurisdiction because parliament has provided sufficient statutory framework under the Land Act for resolving disputes arising from compulsory acquisition. Counsel for the 2<sup>nd</sup> to 4<sup>th</sup> Respondents relied on the cases of **Speaker of the National Assembly –v- James Njenga Karume (1992) KLR 425;** **Henry Wainana Wakihoro & Another –v- National Land Commission & 2 Others (2018) eKLR;** **East Africa Gas Company Limited and Another –v- National Land Commission & 3 Others (2015) eKLR;** **Fredrick Mworira –v- District Land Adjudication Officer Tigania West/East & 3 Others, Meru Petition NO. 129 of 2011** and **Mutava & 2 Others –v- Managing Director of Kenya Ports Authority (2016)eKLR.**

3. The Petitioner opposed the said Notice of Preliminary Objections and submitted that the Amended Petition raises constitutional questions because it mainly seeks to challenge the conduct of the Respondents demolishing the Petitioner's boundary wall, entering the suit property and constructing the Standard Gauge Railway thereon without a decision on the full, prompt and just compensation, contrary to the provisions of Articles 40, 47, 22 ad 23 of the Constitution. The Petitioner cited the case of **CNM – WMG (2018) eKLR** and further submitted that the further amended petition meets the threshold in the case of **Anarita Karimi Njeru –v- Republic (1979)eKLR.** That the issue raised in the further amended petition is neither a debt collection nor enforcement of a contract dispute. The Petitioner further submitted that the court has jurisdiction to hear and determine disputes relating to compulsory acquisition of land. The Petitioner's counsel relied on the case of **Christopher Ngusu Mulwa and 28 Others –v- County Government of Kitui & 2 Others (2017) eKLR;** **Charles Cosmas Mdari –v- Attorney General & 2 Others (2019)eKLR** and **Crispus Maina Gaitho –v- Attorney General & 3 Others (2017)eKLR.**

4. I have considered the submissions made. The main issue in the Preliminary Objections raised is whether the court has jurisdiction to try the matter. In the case of **Owners of Motor Vessel" Lilian S" –v- Caltex Oil Kenya Limited (1989) 1 KLR,** Nyarangi JA held as follows:

**“Jurisdiction is everything. Without it, a court has not power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law downs its tools in respect to the matter before it the moment it holds the opinion that it is without jurisdiction. ”**

5. The Petition herein is about compulsory acquisition of the petitioner's land by the Government of Kenya for and on behalf of the 2<sup>nd</sup> Respondent for purposes of construction of Standard Gauge Railway. Since the filing of the Petition, the Petitioner has been paid some compensation for both the suit property which was acquired and for the demolished wall. Pursuant to leave granted by the court, the Petitioner amended the Petition to include an order for interest and an award of damages.

6. The jurisdiction of this court as given in Article 162 (2) (b) of the Constitution and Section 13 of the Environment and Land Court Act means that the Court can hear any matter related to the environment and land. Section 13 (1) and (2) of the Environment and Land Court Act

provides as follows:

**“ (1) The court shall have original and appellate jurisdiction to hear and determine all disputes in accordance with Article 162 (2) (b) of the Constitution and with the provisions of this Act or any other law applicable in Kenya relating to environment and land.**

**(2) In exercise of its jurisdiction under Article 162 (2) (b) of the Constitution , the court shall have power to hear and determine disputes-**

**(a)**

**(b) relating to compulsory acquisition of land;**

**(c)**

**(d)**

**(e) any other dispute relating to environment and land.**

**(3)**

**(4)**

**(5)**

**(6)**

**(7) In exercise of its jurisdiction under this Act, the court shall have power to make any order and grant any relief as the court deems fit and just, including –**

**(a)**

**(b)**

**(c) award of damages**

**(d) compensation**

**(e)**

7. Under the Land Act, the “court “ means the Environment and Land Court established under the Environment and Land Court Act No. 19 of 2011. The Land Act does not oust the inherent jurisdiction of this court. It is clear that this court has jurisdiction over the dispute herein.

8. Therefore it is my finding that the Preliminary Objections raised by the 2<sup>nd</sup> – 4<sup>th</sup> Respondents are not merited. The same are hereby dismissed with costs.

**DATED, SIGNED and DELIVERED at MOMBASA this 7<sup>TH</sup> day of July 2020.**

**C.K. YANO**

**JUDGE**

**In the presence**

Yumna

Hassan

Court

Assistant