



**Maluki & another v National Land Commission & 4 others (Environment and Land
Petition E016 of 2024) [2025] KEELC 7692 (KLR) (6 November 2025) (Ruling)**

Neutral citation: [2025] KEELC 7692 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT AND LAND PETITION E016 OF 2024
MAO ODENY, J
NOVEMBER 6, 2025**

BETWEEN

TERESIAH WANGUI MALUKI 1ST PETITIONER

FELIX D MALUKI 2ND PETITIONER

AND

THE NATIONAL LAND COMMISSION 1ST RESPONDENT

THE KENYA URBAN ROADS AUTHORITY 2ND RESPONDENT

**THE NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY 3RD
RESPONDENT**

THE LAND REGISTRAR, NAKURU 4TH RESPONDENT

THE HON ATTORNEY GENERAL 5TH RESPONDENT

RULING

1. This ruling is in respect of the 2nd, 4th and, 5th Respondents Preliminary objection dated 15th July, 2024, which is raised on the following ground:
 - a. That this entire petition be struck out with costs on the ground that this court has no jurisdiction to preside over and or determine this Petition as it is a preserve of the Land Acquisition Tribunal under Section 133 C (6) of the [Land Act](#) in the first instance. (sic)

2Nd, 4Th & 5Th Respondents' Submissions

2. Ms. Shirika, counsel for the 2nd, 4th and, 5th Respondents filed submissions dated 24th July, 2025, and submitted that this matter ought to have been filed before the Land Acquisition Tribunal in the first instance, as it relates to compulsory acquisition of a way leave and or land.



3. Counsel submitted that it is a dispute on the failure to complete an acquisition process with regard to the wayleave of storm water, and relied on Article 162 (2b) of *the Constitution* and Section 133 C of the *Land Act*.
4. Counsel submitted on the law on compulsory acquisition which is provided for under Part VIII of the *Land Act* 2012, as amended in 2019, Section 133 C of the Act provides for the jurisdiction of the Tribunal.
5. Ms. Shirika further submitted that 133 D of the *Land Act*, read together with Section 16 A of the Environment and *Land Act*, vests, in the Environment and Land Court appellate jurisdiction to hear appeals from the Land Acquisition Tribunal.
6. Counsel relied on the case of Kariuki vs National Land Commission & 2 others KEELC 5848 (KLR), where the court held that disputes relating to compulsory acquisition at the level of primary adjudication should be filed at the Land Acquisition Tribunal.
7. Similarly in the case of Speaker of the National Assembly v Karume (Civil Application 92 of 1992) [1992] KECA 42 (KLR) (29 May 1992) (Ruling), the Court of Appeal held that where there is a clear procedure for redress of any particular grievance prescribed by *the Constitution* or an Act of Parliament, that procedure should be strictly followed. Counsel urged the court to find that this matter was prematurely filed before this court and should be dismissed with costs.

Petitioners' Submissions

8. Mr. Kisila, counsel for the Petitioners filed submissions dated 31st July, 2025, and identified the issues for determination as, whether the subject Preliminary objection is merited and who should pay costs.
9. On the first issue as to whether the Preliminary objection has merit, counsel submitted that the Respondents have interpreted the provisions of Section 133C of the *Land Act*, 2012, in a parochial, narrow and one-sided manner to defeat the petitioners' pursuit of justice.
10. Mr. Kisila submitted that the remit of the Land Acquisition Tribunal as provided for under Section 133C of the *Land Act* 2012, confines the former's jurisdiction to aspects relating to the process of compulsory acquisition of land to aspects relating to quantum.
11. Counsel submitted that the requisite constitutional mandate to adjudicate questions of legality, administrative justice, and violations of the fundamental rights and freedoms arising from and/or related to compulsory acquisition remains with this court.
12. According to counsel, this petition raises distinct matters of constitutional interpretation or application that can only be dealt with by this court. Counsel further submitted that the 1st Respondent proposed to acquire and initiated the process of acquiring on behalf of the 2nd Respondent the subject properties, Nakuru Municipality Block 16/181 and Nakuru Municipality Block 16/246.
13. Counsel stated that however, despite the gazettment of the said acquisition and receiving the Petitioners' compensation claim for acquisition of the subject properties, the 1st respondent has deliberately failed to undertake full, adequate, fair, reasonable and just compensation for the same.
14. It was further counsel's submission that the Petitioners cannot enjoy the full use of their land, hence a violation of their right to property as provided for under Article 40 of *the Constitution*.
15. Counsel submitted that the respondent should not be heard to invoke the doctrine of exhaustion, as it is a ploy to deny the petitioners their right to just and fair compensation. Counsel relied on the case



of Republic vs National Environment Management Authority ex-parte Sound Equipment Limited [2011] eKLR, where the court held that the doctrine of exhaustion is not absolute and that it should not be applied mechanically where alternative forums are incapable of granting effective and sufficient forms of relief.

16. According to Mr. Kisila, counsel for the Petitioners, the petition seeks the enforcement of the 2nd Respondent's decision to compulsorily acquire the suit properties and that it does not seek to canvass the issues related to the viability of the Petitioners' claim to an award based on compulsory acquisition. It seeks to fast track the process of compulsory acquisition hence this court has the requisite jurisdiction to handle the matter.
17. Mr. Kisila gave a brief background to the Petition and submitted that before the current proceedings, the suit lands were the subject matter in proceedings before the National Environment Tribunal (NET), and in its decision dated 17th August, 2022, the Tribunal held that the actions of the 3rd Respondent of enforcing eminent domain through the issuance of a restoration order on the subject properties lacked legal basis. Counsel submitted that it is after this decision that the 2nd Respondent contacted the 1st Respondent to commence the process of compulsory acquisition of the subject properties.
18. Counsel submitted that, having already submitted themselves to the jurisdiction of the National Environment Tribunal (NET), it would defeat the course of justice for the Petitioners to be required yet again to present their claim to another tribunal to adjudicate over the current dispute.
19. Counsel submitted that the instant petition is properly before this Honourable Court, and relied on Article 40 & 162 (2) (b) of *the Constitution* of Kenya, Section 111& 133 C of the *Land Act*, 2012 and Section 13 of the *Environment and Land Court Act*, and the cases of Geoffrey Muthinja Kabiru & 2 others vs Samuel Mungai Nzioka & 2 others [2015] eKLR. Counsel urged the court to dismiss the preliminary objection with costs.

Analysis And Determination

20. The issue for determination is whether the 2nd, 4th and 5th Respondents Preliminary objection dated 15th July, 2024 is merited. The Supreme Court in the case of Hassan Ali Joho & another -Vs- Suleiman Said Shabal & 2 Others SCK Petition No. 10 of 2013 [2014] eKLR held:

“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”

21. It is trite that jurisdiction flows solely from *the Constitution* or an Act of Parliament, and cannot be assumed or implied. The Supreme Court in the case of Samuel Kamau Macharia & Another vs Kenya Commercial Bank Ltd & 2 Others (2012) eKLR held as follows:

“A court's jurisdiction flows from either *the constitution* or legislation or both. Thus, a court of law can only exercise jurisdiction as conferred by *the constitution* or other written law. It cannot arrogate itself jurisdiction exceeding that which is conferred upon it by the law. We agree with counsel for the first and second respondents in his submission that the issue as to whether a court of law has jurisdiction to entertain a matter before it, is not one of mere procedural technicality; it goes to the very heart of the matter, for without jurisdiction, the court cannot entertain any proceedings.”



22. When an issue on the jurisdiction of a court to hear and determine a case is raised, the court must handle the said issue first as if the finding is in the negative then it must lay down its tools.
23. The jurisdiction of this court is set out in Article 162(2)(b) of *the Constitution* as follows:

“(2) 2) Parliament shall establish courts with the status of the High Court to hear and determine disputes relating to:

- (a) Employment and labour relations; and
- (b) The environment and the use and occupation of, and title to, land.”

24. Parliament enacted the *Environment and Land Court Act* 2011, pursuant to the said Article 162(2) (b) of *the Constitution*. Section 13 of the Act sets out in detail, the extent of the jurisdiction of the court in the following terms:

- “(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) Relating to environmental planning and protection, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources;
 - (b) Relating to compulsory acquisition of land;
 - (c) Relating to land administration and management;
 - (d) relating to public, private and community land and contracts, choses in action or other instruments granting any enforceable interests in land; and
 - (e) Any other dispute relating to environment and land.
- (3) Nothing in this Act shall preclude the Court from hearing and determining applications for redress of a denial, violation or infringement of, or threat to, rights or fundamental freedom relating to a clean and healthy environment under Articles 42, 69 and 70 of *the Constitution*.
- (4) In addition to the matters referred to in subsections (1) and (2), the Court shall exercise appellate jurisdiction over the decisions of subordinate courts or local tribunals in respect of matters falling within the jurisdiction of the Court.
- (5) Deleted by Act No. 12 of 2012, Sch.
- (6) Deleted by Act No. 12 of 2012, Sch.
- (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) Interim or permanent preservation orders including injunctions;
- (b) Prerogative orders;
- (c) Award of damages;
- (d) Compensation;
- (e) Specific performance;
- (g) Restitution;
- (h) Declaration; or
- (i) Costs”

25. Section 133A (1) of the [Land Act](#) 2012, provides as follows:

“(1) There is established a Tribunal to be known as the Land Acquisition Tribunal which shall consist of three persons appointed by the Cabinet Secretary through a notice in the Gazette.”

26. Section 133C of the [Land Act](#) 2012 sets out the jurisdiction of the Land Acquisition Tribunal (hereinafter referred to only as “the Tribunal”) as follows:

- (1) The Tribunal has jurisdiction to hear and determine appeals from the decision of the Commission in matters relating to the process of compulsory acquisition of land.
- (2) A person dissatisfied with the decision of the Commission may, within thirty days apply to the Tribunal.
- (3) Within sixty days after the filing of an application under this part, the Tribunal shall hear and determine the application.
- (4) Despite subsection (3) the Tribunal may, for sufficient cause shown, extend the time prescribed for doing any act or taking any proceedings before it upon such terms and conditions, if any, as may appear just and expedient.
- (5) If, on an application to the Tribunal, the form or sum which in the opinion of the Tribunal ought to have been awarded as compensation is greater than the sum which the commission did award, the Tribunal may direct that the Commission shall pay interest on the excess at the prescribed rate.
- (6) Despite the provision of Sections 127, 128 and 148(5) a matter relating to compulsory acquisition of land or creation of wayleaves, easements and public right of way shall, in the first instance, be referred to the Tribunal.
- (7) Subject to this Act, the Tribunal has power to confirm, vary or quash the decision of the Commission.
- (8) The Tribunal may, in matters relating to compulsory acquisition of land, hear and determine a complaint before it arising under Articles 23(2) and 47(3) of [the Constitution](#), using the framework set out under Fair Administrative Action or any other law.”



27. It is vital to note that both the Tribunal and this court have jurisdiction to hear and determine matters relating to compulsory acquisition of land. The fact that the Land Acquisition Tribunal has been established and is currently operational, it should be the first port of call for disputes in respect of compulsory land acquisition.
28. In the case of *Geoffrey Muthinja Kabiru & 2 Others v. Samuel Munga Henry & 1756 Others* [2015] eKLR the court stated that:

“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 fora 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.”
29. The 2nd, 4th and, 5th Respondents contend that this matter ought to have been filed before the Land Acquisition Tribunal, in the first instance, as it relates to compulsory acquisition of a way leave and or land. The Petitioner on the other hand, contends that, having already submitted themselves to the jurisdiction of the National Environment Tribunal (NET), it would defeat the course of justice for the Petitioners to be required yet again to present their claim to another tribunal to adjudicate over the current dispute.
30. The Petitioners gave a background to the petition, which indicated that the compulsory acquisition of the suit parcels is not yet complete. The 1st Respondent had shown interest in the acquisition of the suit properties on behalf of the 2nd Respondent but despite the petitioners filing the claim form and forwarding it to the 1st Respondent, there has been no response on the issue of compensation.
31. The Petitioners’ claim is two-pronged, seeking a mandatory injunction compelling the 3rd Respondent to compensate the petitioners in respect of the actions on the suit properties of forcefully and illegally directing the storm water through the suit properties with the full knowledge of the non-existent storm water drainage on such terms as per the valuation report.
32. The Petitioners’ second claim is for a mandatory injunction compelling the 2nd respondent to take over and continue the management of the suit properties and create a wayleave after an agreement with the parties after full compensation to ameliorate the damage caused by the flood water.
33. Section 133C of the *Land Act*, 2012, sets out the jurisdiction of the Land Acquisition Tribunal, which is to hear and determine appeals from the decision of the Commission in matters relating to the process of compulsory acquisition of land. It also provides that if a person is dissatisfied with the decision of the Commission, they may, within thirty days, apply to the Tribunal.
34. It is on record that the 1st Respondent, the National Land Commission has not yet made any decision on the issue of acquisition of the suit parcels of land. The Petitioners are perturbed by the actions of the Respondents in directing storm water to the suit parcels of land and yet they have not acquired the land.
35. I have considered the Preliminary Objection by the Respondents, the submissions therein by counsel both counsel and find that this Petition falls within the jurisdiction of this court as it is not only an issue



of compulsory acquisition per se but involving other alleged constitutional violations which the court has to determine. Whether the Petition has merit will be determined at the hearing of the Petition.

36. The Preliminary objection by the Respondents is hereby dismissed with costs in the cause.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 6TH DAY OF NOVEMBER 2025.

M. A. ODENY

JUDGE

