

**IN THE COURT OF APPEAL
AT NYERI
(CORAM: KANTAI, LESIIT & ALI-ARONI,
JJ.A.) CIVIL APPEAL NO.94 OF 2020**

BETWEEN

HARRISON NJOKA NDOGORA.....APPELLANT

AND

**KENYA ELECTRICITY GENERATING COMPANY
(KENGEN).....1ST
RESPONDENT NATIONAL LAND
COMMISSION.....2ND RESPONDENT
ATTORNEY GENERAL.....3RD
RESPONDENT**

*(Being an appeal against the Judgment of the Environment and
Land Court at Embu (Angima, J.) delivered on 7th May, 2020*

in

***ELC Petition No.2B of
2015.)***

JUDGMENT OF THE COURT

This is a first appeal arising from the judgment of the Environment and Land Court (“ELC”) which dismissed the appellant’s petition regarding the suit property known as parcel 184 Gichiche Adjudication section of the then Mbeere District.

The mandate of this Court in this appeal is as stated in the case of ***Nairobi Bottlers Limited vs. Imbuga*** (Civil Appeal E661 of 2022) [2024] KECA 434 (KLR) (26 April 2024) (Judgment) where the Court stated:

“Our mandate in a first appeal as donated by rule 31 of the Court of Appeal Rules, 2022 is to re-appraise the evidence and to draw inferences of fact; to retry the case. That mandate has been the subject of various judicial pronouncements in such cases as Nicholas Njeru vs. Attorney General & 8 Others [2013] eKLR where it was stated: “[In] a first appeal, we are required to re-evaluate the evidence and arrive at our own independent findings and conclusions of the matter.”

The record reflects that the appellant herein was the petitioner at the ELC where he stated that the suit property known as parcel

184 Gichiche Adjudication section Mbeere District (the said property) measuring 460 acres was registered to the late Njoka Ndogora on behalf of the Nditi clan. He stated that he had a grant ad litem to represent the estate of Njoka Ndogora; that the suit property was compulsorily acquired by the government in the year 1960 for purposes of setting up the Kindaruma Dam. The appellant claimed that the clan lost use of the property for over 54 years and that their rights had been violated. He sought a permanent injunction to stop the respondents from interfering with the suit property; compensation at market value of the suit property and an award of exemplary damages against the respondents.

The 1st respondent’s case was that indeed the suit property was acquired for the setting up of the Kindaruma Dam and compensation for the acquisition was paid to the area District

Commissioner by the Commissioner of Lands. The title of the

property was said to vest in the 1st respondent and the appellant had no claim against any of the respondents.

It was the case by the respondents that the office of the District Commissioner, Embu confirmed receiving the compensation sometime in 1985 but stated that it was unable to distribute the compensation due to infighting in the clan. The respondents also questioned the appellant's *locus standi* as the clan kept changing representatives and the appellant did not exhibit any authority from the Nditi clan. When the petition came up for hearing before the ELC the petitioner and the respondents abandoned an earlier wish to proceed by viva voce evidence and decided to fully rely on written submissions and documents filed at the ELC.

The Court delivered its judgment of 7th May, 2020 where it dismissed the petition. In doing so, the ELC held that the appellant did not show that he had authority to sue on behalf of the clan members. The court also noted that there was evidence on record that the compensatory money was made available in the 1980s but could not be distributed due to infighting in the clan. The members of the Nditi clan were also faulted for their lack of diligence in the matter as they approached the court 38 years after compulsory acquisition of the suit property and 29 years after the compensation had been deposited with the District Commissioner, Embu. The Court also noted that there was a procedure set out in the Land Acquisition Act where land owners

aggrieved by an award could lodge claims with the Land Acquisition Compensation Tribunal. The

petitioner or his clan had not questioned the award or availed themselves of that procedure if the award made was inadequate.

Being aggrieved by the dismissal of his petition, the appellant preferred this appeal. The Memorandum of Appeal is dated 15th July, 2020 seeking to have the judgment set aside and the appeal allowed. The appellant contends that the trial Court ignored the authority to file suit, which was on record, when it held that the appellant had no *locus standi* to file the petition. The appellant also states that the Court erred in failing to find that the appellant and his clan were never compensated for their land despite the acknowledgment that the land was compulsorily acquired. The Judge is also faulted for not finding that the 1st and 2nd respondents were fully responsible to explain the fate of the compensation amount deposited with the District Commissioner Embu; that the Judge erred in law and fact in not finding that the appellant and the Nditi clan had suffered double jeopardy by losing both their land (460 acres) and the compensation amount; that the Judge erred in law and fact in failing to appreciate the designation and or the description of the suit land having been land under adjudication scheme at the time of compulsory acquisition and, finally;-

“The Judge erred in law and fact in entering judgment the way he did.”

The appellant has filed submissions dated 20th February, 2025 in support of his appeal.

The respondents have filed submissions dated 28th April, 2025 through the office of the Attorney General, in opposition to the appeal. They agree with the findings of the ELC and ask this court to dismiss the appeal with costs.

This appeal was heard on 20th May, 2025 on the Court's virtual platform. Learned counsel **Mr. Karwanda** appeared holding brief for **Mr. Wachira** for the appellant. There was no appearance for the respondents despite being served with a hearing notice on 29th April, 2025. Counsel for the appellant relied fully on his written submissions.

We have considered the record of appeal, the submissions by the parties and the relevant law.

It is not in dispute that the suit property was held by the late Njoka Ndogora but it is not clear whether he held it as his own property or on behalf of the Nditi clan. It is also not in dispute that the suit property was compulsorily acquired by the government; for the building of the Kindaruma Dam. It is further not in dispute that compensation for acquisition of the land was released to the Embu District Commissioner's office in 1985.

The appellant's case was that the Nditi clan was never paid compensation after the government took over their land and at the ELC, he sought compensation to the tune of Kshs.460,000,000 which was said to be the current value of the land. He also sought exemplary damages and general damages for trespass.

We are of the considered view that two main issues arise in this appeal. Firstly, whether the appellant had *locus standi* to bring the suit on behalf of the Nditi clan. Secondly, whether the Nditi clan was compensated for the compulsory acquisition of the suit property.

On the first issue of *locus standi*, this Court in the case of **National Environmental Tribunal vs. Overlook Management Limited & 5 Others** [2019] eKLR discussed *locus standi* as follows:

“Perhaps closer home and more recently, the Supreme Court of Nigeria held in Elendu v Ekwoaba (1998) 12 NWLR (Pt.578) 320 that in determining whether a person has locus standi or not, the following factors may serve as guidelines;

- i) For a person to have locus standi in an action, he must be able to show that his civil rights and obligations have been or are in danger of being infringed.***
- ii) The fact that a person may not succeed in an action does not have anything to do with whether or not he has a standing to sue.***
- iii) Whether a person’s civil rights and obligations have been affected, depends on the particular facts of the case.***
- iv) The court should not give an unduly restrictive interpretation to the expression locus standi. [Emphasis put]”***

In addition, the court further held that in determining a person’s capacity to sue, the court had to be satisfied the action was

justiciable and a dispute between the parties existed. The said guidelines appear applicable and reasonable although they cannot be said to be conclusive.

Ultimately each case is to be decided on its own peculiar set of circumstances and not on a one-size-fits-all basis. In our jurisprudence, and although decided under the auspices of the current Constitution, the Court of Appeal in Mumo Matemu v Trusted Society of Human Rights Alliance & 5 others (2013) eKLR observed that the conservative requirements of locus that existed in the old regime that treated litigants, other than those directly affected, as mere or meddlesome busy bodies had the negative effect of limiting access to justice.

The suit property was registered in the name of Njoka Ndogora (deceased). The appellant who is a son of the deceased produced before the Judge a limited grant ad litem dated 19th September, 2014 for the estate of his late father limited to the filing / defending of Nairobi ELC No. 1238 of 2013 (this suit was transferred and became Embu ELC no. 102 of 2017). There was nothing in that grant authorizing the appellant to file the suit before the Judge at the ELC. The appellant produced a letter written by the Chief of his area dated 14th September, 2014. That letter merely identified the appellant as a resident of Kindaruma sub location; that he was a son of the deceased and that he was the one coordinating affairs in relation to the estate of his late father. *“He enjoys the blessing of the entire family and the same family have confidence in him as he coordinates his father’s matters...”*

The said limited grant did not authorize the appellant to file the petition at the ELC and the Chief’s letter was irrelevant to

affairs relating to land claimed by the clan.

The appellant did not place any material before the Judge to show that the clan had authorized him to represent clan interests and as noted by the Judge in the said judgment, there was a related petition filed in Nairobi (later transferred to Embu) where a petitioner in the related petition alleged that he was Chairman of the clan and had authority to represent it. There was thus total confusion on who had authority to represent the clan and in those circumstances, even with a liberal reading of **Article 22** of the **Constitution of Kenya, 2010** the appellant required to show that he had authority to represent the clan. It was no wonder in those circumstances that compensation money after compulsory acquisition had been sent to the District Commissioner, Embu but had remained uncollected for well over half a century. We therefore agree with the Judge's conclusion on the issue whether the appellant had *locus standi* to bring the petition where the Judge found at paragraph 28 of the judgment;

“28. The court is thus of the opinion that even though the Petitioner claimed to have filed the petition on behalf of Nditi clan, he has failed to demonstrate that he had any authority from its members to file the petition and to seek any reliefs on their behalf. Accordingly, the court concurs with the 1st and 3rd respondents that the petitioner has no authority or capacity to file the instant petition on behalf of Nditi clan hence the petition is incompetent and bad in law.”

We now turn to the second issue of compensation. There

was evidence placed before the Judge that the Commissioner for
Lands

had, after compulsorily acquiring the suit property had released compensation funds to the District Commissioner, Embu but the same had not been disbursed to the Nditi clan due to infighting amongst clan members. The letter by the District Commissioner, Embu, dated 19th July, 1985 stated, *inter alia*, that certain named clans had not been paid compensation due to internal wrangles and the District Officer, Gachoka, was asked to sort out clan problems so that payment would be made after land had been acquired and compensation availed. The respondents having shown that compensation had been made had discharged their legal duties as the award was not challenged in any way as required by the Land Acquisition Act.

The Judge was right to find that compensation had been made and that the members should resolve their issues and pursue compensation which had been availed through the District Commissioner, Embu. This ground of appeal also fails.

As we pen off, we also find that no reason was given as to why the Nditi clan did not pursue the issue of their compensation from the year 1985, up until a rival faction filed Nairobi ELC Petition 1238 of 2013, which must have woken them up from their slumber, leading them to file ELC Petition 596 of 2014. As noted by the ELC, there has been inordinate delay in making the claim.

This Court in the case of **County Government of Narok & Another vs. Mwavali** (Civil Application E072 of 2023) [2024]

KECA 390 (KLR) (12 April 2024) (Ruling) stated on inordinate delay as follows:

“In considering what constitutes inordinate delay, this Court in Cecilia Wanja Waweru v. Jackson Wainaina Muiruri & another [2014] eKLR held that: “There is no set rule as to what constitutes inordinate delay. Whether or not a party is guilty of inordinate delay depends on the circumstances of the case.”

We agree with the learned ELC Judge that the appellant is guilty of unexplained inordinate delay in filing their suit.

For all the foregoing reasons, we hereby find that this appeal is unmerited and we dismiss it with no order on costs as the respondents did not appear at the hearing of the appeal.

Dated and delivered at Nyeri this 11th day of December, 2025.

S. ole KANTAI

.....
JUDGE OF APPEAL

J. LESIIT

.....
JUDGE OF APPEAL

ALI - ARONI

.....
JUDGE OF APPEAL

*I certify that this is
a true copy of the
original*

Signed

DEPUTY REGISTRAR