

REPUBLIC OF KENYA
IN THE ENVIRONMENT & LAND COURT AT MILIMANI
ELC NO. E178 OF 2025

KORINKE OLE GISA & 183 OTHERS	-	PLAINTIFF
VS		
DUPOTO/DAFUR SETTLEMENT		
WELFARE SCHEME	-	1ST DEFENDANT
JOHN KIYIAN KARU	-	2ND-15TH DEFENDANTS
KENYA RAILWAYS CORPORATION	-	16TH DEFENDANT
NATIONAL LAND COMMISSION	-	17TH DEFENDANT
HON GENERALI NIXON KORIR		
PRINCIPAL SECRETARY, MINISTRY		
OF LANDS, PUBLIC WORKS, HOUSING &		
URBAN DEVELOPMENT	-	18TH DEFENDANT
JOHNSON & PARTNERS LLP	-	19TH DEFENDANT
SANKALE & CO ADVOCATES	-	20TH DEFENDANT
AND		
LAW SOCIETY OF KENYA	-	1ST INTERESTED PARTY
LETANGULE & CO. ADVOCATES	-	2ND INTERESTED
PARTY		
KCB BANK KENYA LIMITED	-	3RD
INTERESTED PARTY		
FINANCIAL REPORTING CENTRE	-	4TH INTERESTED
PARTY		
CENTRAL BANK OF KENYA	-	5TH
INTERESTED PARTY		
NICK NDEDA & ASSOCIATES	-	6TH INTERESTED
PARTY		
MOINKET & ASSOCIATES	-	7TH
INTERESTED PARTY		

KEMOSI MOGAKA & CO. ADVOCATES PARTY	-	8TH INTERESTED
T.K. RUTTO & CO. ADVOCATES PARTY	-	9TH INTERESTED
KIPKENDA & CO. ADVOCATES INTERESTED PARTY	-	10TH
CHEBOI OUMA & CO. ADVOCATES PARTY	-	11TH INTERESTED
HASHIM & LESAIGOR & CO. ADVOCATES PARTY	-	12TH INTERESTED
WESLEY KIBET MOOTEI DIRECTOR OF CRIMINAL INVESTIGATIONS IN THE REPUBLIC OF KENYA	-	13TH INTERESTED PARTY
THE CHIEF LAND REGISTRAR	-	14TH INTERESTED PARTY
		15TH INTERESTED PARTY

RULING

1. What is before me are three preliminary objections filed as follows;
 - a. the 16th Defendant's Preliminary Objection dated 12/5/2025
 - b. the 1st Defendant's Preliminary Objection dated 19/6/2025
 - c. the 18th Defendant's Preliminary Objection dated 16/6/2025

The Pleadings

2. The Plaintiffs filed suit against the Defendants and the Interested parties vide the Plaint dated 14/4/2025, seeking orders, inter alia, requiring the 1st -15th and 18th Defendants to disclose the details and documentation of any disposal of the entire part of the suit land measuring 93 acres, such as the minutes of the meeting resolving to sell the property, the mode of payment of the consideration, and the bank accounts into which the proceeds were deposited; an order compelling the 1st -15th and the 19th -20th Defendants to pay the

balance due to the Plaintiffs through Letangule & Co Advocates; in the alternative, an order directing the property to revert to the Plaintiffs; an order permanently restraining the occupation of the suit property until the 2nd -15th and the 19th -20th Defendants provide a full account of the consideration, the individuals who conducted the transaction, the instructions they acted on, and pay the balance due to the Plaintiffs; an order barring occupation of 38 acres illegally exercised from the suit land until full compensation of its acquisition is paid to the Plaintiffs at market rates or in the alternative the said parcel revert to the Plaintiffs.

3. The Plaintiffs assert that they are the registered owner of the property in dispute, specifically LR No 2935, encompassing an area of 168 acres, which was acquired from Nairobi City County in 2010. In 2015, they received information that the 16th Defendant was interested in acquiring 93 acres of the said land. During a public inquiry at the NHIF Auditorium, the National Lands Commission (NLC) concluded that the members of the 1st Defendant would be compensated, contingent upon survey verification of the land's size and subdivision. Despite consultations among the Defendants, which resulted in an agreement to acquire part of the land, the officials of the 1st Defendant, failed to disclose pertinent details regarding the transaction, including the total acreage to be acquired and the purchase price. Subsequently, it was revealed that Johnson & Partners Advocates LLP had been secretly appointed on 31/10/2023 to execute the transaction in place of Letangule & Co Advocates, their designated legal advisors.
4. They discovered that the title was issued in the name of the officials of the 1st Defendant; that Kenya Railways agreed to purchase the property at Kshs 50 million per acre; that it signed a sale agreement and transfer of 55 acres through Johnson & Partners Advocates LLP; and that, upon release of the funds by Kenya Railways, they were

requested to provide their bank details to John Karu, the 1st Defendant's Secretary, to facilitate the payment of funds to the 1st Defendants' members. Subsequently, they received a nominal deposit of Kshs. 300 million and were advised that the remaining balance would be paid after their relocation from the land, by the 27/12/23 deadline set by the 16th Defendant. On 27/12/23, prior to receiving the full sale proceeds, the Plaintiffs were evicted and consequently had to seek alternative accommodation. Although a total consideration of Kshs. 2.750 Billion was disbursed by the 16th Defendant to the 19th and 20th Defendants, they have not yet received their payments, nor have they received full communication from the 17th and 19th Defendants on the amount disbursed, details of the agreements signed, the signatories, the beneficiaries of the payments, the balance due to each member of the society, the measures to pay the balance, and the quantum of legal fees paid to firms of lawyers.

5. The Plaintiffs have particularised fraud against the 2nd-20th Defendants under para 36 of the Plaint.
6. Simultaneously with the filing of the suit, the Plaintiffs also filed a notice of motion dated 14/4/2025, seeking inter alia conservatory orders barring the 16th Defendant from, in relation to the 55 acres sold, the entire 93 acres excised from LR No 2935, or any part thereof, commencing, continuing or concluding the process of occupation, selling, transferring or dealing with the suit land in a manner prejudicial to the interests of the Plaintiffs.

The Preliminary Objections

7. The 16th Defendant's Preliminary Objection dated 12/5/2025 is based on the following grounds;
 - a. THAT this Honourable Court lacks the requisite jurisdiction to adjudicate over this dispute by virtue of the provisions of Sections 112 and 133C of the Land Act No. 6

of 2012 as the issues stated in the Petition ought to first be dealt with in the dispute resolution mechanisms mandatorily provided for under the law, which vests jurisdiction of this matter in the Land Acquisition Tribunal;

- b. THAT Section 133C (6) of the Land Act No. 6 of 2012 specifically states that disputes relating to compulsory acquisition of land ought to first be lodged with the Land Acquisition Tribunal.
- c. THAT proceedings before this honourable court can only be instituted through an appeal against the decision of the Land Acquisition Tribunal, and are limited to the extent stipulated under Section 133D of the Land Act No.6 of 2012.
- d. THAT this suit is therefore premature, mischievous, vexatious and an abuse of the court process.
- e. THAT this court therefore lacks jurisdiction to entertain, hear or determine the issues raised in the Plaintiff.

8. The 1st Defendant equally filed an objection dated 19/6/25 challenging the validity of the suit on the grounds that ;

- a. THAT this suit is bad in law, frivolous, vexatious and in abuse of the court process.
- b. THAT the Notice of Motion application dated 14th April, 2025 is defective and offends the mandatory provisions of Order 51 Rule 4 of the Civil procedure Rules, 2010.
- c. THAT prayer 16 of the Notice of Motion application dated 14th April, 2025 offends the mandatory provisions of Order 9 Rule 1 of the Civil Procedure Rules, 2010.
- d. THAT based on the following grounds, the application dated 14th April, 2025 is hopelessly incompetent and

fatally defective thus and the same should be struck out in limine and be dismissed with costs.

9. Similarly, the 18th Defendant raised its objection on the grounds that the court lacks jurisdiction to hear and determine both the application and the Plaint dated 14/4/2025 for two reasons;
 - a. The suit relates purely to compulsory land acquisition and Section 133C (6) of the Land Act, 280, vests the Land Acquisition Tribunal with the primary jurisdiction to adjudicate all disputes relating to the compulsory acquisition of land.
 - b. As such, the jurisdiction of the court has been invoked prematurely, as Section 133D of the Land Act and section 16A of the Environment and Land Court Act, vest in this court an appellate jurisdiction to hear and determine appeals from the Land Acquisition Tribunal.

The written submissions

10. The parties elected to canvass the three Preliminary objections vide written submissions which have been filed on record.
11. The Plaintiff filed submissions dated 13/8/25. As to whether the court has jurisdiction to hear and determine the suit, the Plaintiff submitted that, although the matter originated from a compulsory acquisition, the dispute before the court is multifaceted. That the claims pertain to client funds remitted to the 19th and 20th Defendants, which were misappropriated and never transmitted to the beneficiaries, a dispute outside the jurisdiction of the Land Acquisition Tribunal [LAT]. That such a matter is for adjudication before the court or the Advocates Disciplinary Tribunal
12. It was further submitted that the second limb of the dispute before the court concerns the embezzlement of Kshs 2.750 Billion by officials of the 1st Defendant in collusion with the 19th and 20th Defendants. That this raises questions of breach of fiduciary duty and

misappropriation of public funds, which go to the root of public accountability and integrity in the compensation process. That the issues arising therefrom, including fraud, breach of trust, and public interest, are matters outside the scope of LAT.

13. It was submitted that, insofar as the Plaintiffs seek orders compelling disclosure of essential information and documentation concerning the acquisition and disposal of land—such as meeting minutes, sale details, payment methods, and bank account transactions—these orders fall within the rights of access to information as stipulated by Article 35 of the Constitution. Furthermore, it was argued that LAT whose jurisdiction is limited to administrative review and compensation disputes, lacks the mandate to enforce constitutional rights.
14. Based on the decision in the case of *R v IEBC Ex parte NASA Kenya & 6 Others* [2017], the court was urged to determine that this case falls within the exception to the exhaustion doctrine. In this case the court concluded that exceptions to the exhaustion requirement may be allowed when the dispute is polycentric, involves multiple legal interests, the statutory forum is unable to adequately balance those interests, significant constitutional values are at risk, and enforcing the exhaustion requirement would compromise access to justice and the constitutional framework.
15. Regarding whether the Preliminary Objection raised by the 16th and 18th Defendants constitutes a pure point of law, Counsel for the Plaintiffs submitted that the assertion that the dispute pertains solely to compulsory acquisition and consequently falls within the jurisdiction of LAT necessitates the court to scrutinize the nature of the dispute and examine the factual circumstances of the case. This approach effectively removes the objection from classification as a pure point of law.

16. Addressing the merit of the objection raised by the 1st Defendant, Counsel submitted that the Plaintiffs' claim is neither unfounded nor malicious. It is based on legitimate grievances and raises substantive legal questions that require judicial determination of the rights that have been infringed or threatened. Consequently, the pleadings before the court are not to be regarded as speculative or ornamental, as they reveal significant legal issues.
17. Is the Notice of Motion dated 14/6/2025 procedurally defective for failing to comply with the provisions of Order 51, Rule 4 of the Civil Procedure Rules. Counsel submitted that Rule 4, as stated, mandates that every notice of motion be supported by general grounds and accompanied by affidavit evidence, and that the Plaintiffs' application complied with this requirement, and that the Defendant's attempt to impugn it is in bad taste.
18. It was further submitted that the 1st Defendant's challenge to prayer 16 of the aforementioned Notice of Motion, alleging non-compliance with Order 9 Rule 1 of the Civil Procedure Rules, is without merit. The firm of Letangule & Co. Advocates is a party to these proceedings; furthermore, the Plaintiffs were initially their clients and have every right to demand payment of what is due to them. In any event, the question of whether the prayer should be granted is not a matter for a preliminary objection, but one that requires evidence to be tendered in proof. The court was urged to dismiss the objection as unmerited and to allow the determination of the application and, eventually, the suit.
19. In support of its objection dated 19/10/25, Counsel for the 1st Defendant submitted that the Plaintiffs have clandestinely introduced a claim for fees, which pertains to the taxation of a bill of costs as stipulated by law. Furthermore, the attempt to include this claim is merely an abuse of the court's process. Additionally, costs are recoverable through the taxation of costs pursuant to the Advocates

Remuneration Order, rather than through indirect prayers in a motion.

20. Counsel drew the court's attention to the decision in *Somoni - vs- Muangi* [2025] KEHC 9582, which reiterated that where delay, lack of jurisdiction, or *res judicata* is apparent from the pleadings, such defects may be raised as a preliminary objection without resort to evidence. Counsel further urged that the instant objection meets that threshold, as the defects alleged are apparent on the face of the motion and pleadings and do not require any fact-finding by the court.
21. The Plaintiffs were further criticized for initiating substantive proceedings without the appropriate originating process, neglecting to disclose grounds, or lacking the necessary supporting affidavits, and were consequently liable to be struck out on the grounds of being fundamentally defective.
22. Concerning prayer No. 16, it was submitted that it contravenes the provisions of Order 9, Rule 1 of the Civil Procedure Rules, as it bypasses the taxation process and transforms interlocutory proceedings into mechanisms for securing advocates' fees, thereby constituting an abuse of the court's process. The court was urged to uphold the objection and strike out the plaintiff's notice of motion dated 19/6/25.
23. Counsel for the 16th Defendants filed submissions dated the 2/9/26 and submitted that the current lawsuit was improperly filed in a court lacking jurisdiction. The appropriate forum is the Land Tribunal (LAT), which has original jurisdiction to hear and determine appeals from the National Land Commission (NLC) concerning the compulsory acquisition of land, as is the case here. In its present form, the suit contravenes the doctrine of exhaustion, which aims to alleviate court congestion and prevent the unnecessary expenditure of judicial resources. Moreover, Parliament has established a three-stage mechanism for resolving disputes related to compulsory acquisition

claims: initially at the NLC [inquiry under section 112 of the Land Act], then at the LAT [under Sections 133A and 133C [6]] of the Land Act], and finally through appeal [Section 133D of the Land Act] to the Environment and Land Court (ELC). Under Section 133[7], the LAT is empowered to confirm, vary or quash the decision of the NLC. The court was urged to find that the suit is premature and to direct the Plaintiff to exhaust the dispute resolution mechanism provided under Parts VII and VIIIA of the Land Act. See the decision in *Gidchiri Thuo & 4 Others -vs- NLC & 6 others* [2021] EKLR

24. Counsel submitted that the Plaintiffs' contention that the claims in the suit are polycentric, as they include allegations of misappropriation of funds and an advocate-client dispute, is largely untenable. Reliance was placed on the court's decision in *Kibos Distillers Limited & 4 Others -vs- Benson Ambuti Adegga & 3 Others* [2020] KEACA 875 KLR, where the court rejected the proposition that jurisdiction can be conferred on the court merely because the pleadings are framed in a multifaceted manner. In conclusion, Counsel submitted that the Plaintiffs' claim that the suit is multifaceted cannot, by any stretch of imagination, confer jurisdiction on the court.
25. The Counsel for the 18th Defendant maintained that the core of the claim, as articulated by the Plaintiffs, concerns alleged irregularities and illegality in the process of compulsory land acquisition and the corresponding compensation under the Land Act. In this suit, the Plaintiffs seek a broad range of remedies, including full disclosure of acquisition terms, disbursement records, beneficiary lists, compensation balances, and legal fee arrangements. According to the Plaintiffs, the acquisition process was marred by irregularities, including a lack of transparency, exclusion from negotiations, unequal distribution of compensation funds, overall mismanagement by officials of the 1st Defendant and various government agencies, and

questions regarding the legality of the acquisition. Taken together, these claims fall within the scope of compulsory acquisition, the NLC's role, compensation procedures, and dispute resolution. Consequently, the dispute, as outlined, pertains directly to compulsory land acquisition and compensation under Section 133C (6) of the Land Act, which falls within the exclusive jurisdiction of the LAT.

26. In conclusion, the Counsel cited several cases, including *Bernard Murage vs. Fine Serve Africa Limited & 3 others* [2015] eKLR; *NGOs Coordination Board vs. EG & 4 others*; and *Katiba Institute* [2023] KESC 17, KLR, to support the assertion that when a specific forum is designated to adjudicate a matter, that forum should be given the opportunity to exercise its legal mandate.
27. The 1st Interested Party [LSK] filed written submissions dated 25/9/25 in support of the two objections dated 12/5/25 and 16/6/25.
28. It was submitted that the dispute at hand arises from compulsory acquisition and compensation, which, by law, must first be addressed through the inquiry mechanisms of the NLC and the appellate jurisdiction of the LAT. It was further submitted that the Plaintiffs' suit is a compensation claim arising from the compulsory acquisition of land, framed in civil and/or contractual language to circumvent the mandatory dispute resolution mechanism under Sections 112 and 133C [6] of the Land Act. An appeal arising from compulsory acquisition concerns the propriety of the acquisition, whereas one from contractual obligations seeks to enforce those obligations.
29. According to LSK, the Plaintiffs are aggrieved by the alleged failure to equitably distribute the compensation funds and by the excision of some land from the suit land. Their grievances are therefore directed to the 16th, 19th, and 20th Defendants and private entities to enforce civil claims. Furthermore, the absence of state action, which is a prerequisite for constitutional claims, underscores

the civil nature of the dispute. The Plaintiffs' grievance is rooted in their disappointment regarding the anticipated benefits, rather than alleged constitutional violations. That filing suit is a deliberate action on the part of the Plaintiffs to attempt to confer jurisdiction on the court through artful pleading which is unacceptable.

30. Counsel submitted that the suit is barred by the doctrine of exhaustion of statutory remedies. The dispute concerns allegations that the 16th Defendant's acquisition and the Defendant's law firms' disbursement of compensation deprived the Plaintiffs of equitable benefits through fraud and unlawful excision. The alleged entitlement to compensation and injunctive relief sought are matters within the NLC and LAT's mandate. The court was urged to uphold the objection.
31. Regarding the issue of jurisdiction, the 2nd Interested Party, Letangule & Co Advocates, contended that the Plaintiffs' claim is founded on a private treaty deliberately concealed by the Defendants through the withholding of pertinent documentation, including offer letters, sale agreements, valuation reports, and precise acreage details. The 16th Defendant orchestrated a transaction disguised as a compulsory acquisition but, in essence, amounted to a private sale.
32. The Plaintiffs' grievance, therefore, pertains to the unlawful and opaque disposition of the residual parcel of land remaining after the compulsory acquisition, which constitutes the subject matter of the suit. Further, the Plaintiffs' pleadings are directed at enforcing contractual obligations arising from the sale and purchase of the land and not compulsory acquisition. That the agreed purchase price or a part of it was misappropriated by the Defendants and the transaction was carried out in breach of fiduciary and contractual duties, and therefore the reliefs sought are grounded in the principles of contract, equity, and restitution, which fall under the ambit of this court.
33. Regarding whether the objection constitutes a pure point of law, it was argued that the issue of compulsory acquisition is neither

explicitly pleaded nor substantiated by the factual context within the Plaintiff. The Plaintiffs' claim is based on a clandestine land sale conducted in secret and tainted by fraud. The Defendant's assertion that the claim pertains to compulsory acquisition, contrary to the averments in the Plaintiff, provides prima facie evidence of contested facts pleaded. Consequently, the objection is not based on a pure point of law, as it is intertwined with factual matters.

34. With respect to prayer No. 16 in the notice of motion dated 14/4/2025, the 2nd Interested Party submitted that the parties are well within their rights to seek payment of legal fees owed to their previous lawyers, who are also parties to the suit, notwithstanding the merit of the prayer, as the same calls for the court to inquire into its legal and factual circumstances at the appropriate time in the proceedings. This objection, therefore, is fact-dependent and falls outside the scope of a pure point of law.

35. Regarding whether the application contravenes the provisions of Order 51, Rule 4 of the Civil Procedure Rules, the 2nd Interested Party submitted that the objection is entirely without merit, as the application delineates the grounds upon which it is based, and the supporting affidavit was properly filed and served. Consequently, the objection is deemed to lack substantive merit.

36. Regarding the court's jurisdiction to entertain the suit, KCB Bank Limited, the 3rd Interested Party, supported the objection raised by the 16th Defendant. Citing the provisions of Sections 112, 133 C, and 133C of the Land Act, the 3rd Interested Party argued that the matter falls within the jurisdiction of the National Land Commission (NLC), the Land Acquisition Tribunal (LAT), and ultimately this court on appeal, in that sequence. Furthermore, the 3rd Interested Party contended that the issues raised in the preliminary objection are points of law that, if upheld, would result in the termination of the proceedings before this court.

37. In light of the provisions of the law outlined above, the lawsuit presently before the court is evidently premature, given that the Plaintiffs were legally obliged to seek recourse through the appropriate mechanisms, namely the NLC and the LAT.
38. In conclusion, the 3rd Interested Party submitted that this court lacks the jurisdiction to adjudicate the matter as filed and urges its dismissal with costs. The Plaintiffs, therefore, invoked the court's jurisdiction prematurely and should have adhered to the procedures stipulated under sections 112 and 133C of the Land Act.
39. In its supplementary submissions filed on 29/10/25, the Plaintiffs contended that the mechanisms outlined in Part VIII of the Act, which encompass conducting inquiries to identify interested parties in the affected land, receiving written claims for compensation from such interested parties, and ultimately disbursing compensation, are not applicable to the present dispute.
40. That in this case, the 16th Defendant directly acquired the property from the 1st Defendant, negotiated the terms, agreed on the valuation, and remitted the contractual sum without the involvement of the NLC. Payments were made directly by the 16th Defendant to the 1st Defendant, rather than through the NLC. Consequently, this transaction does not constitute a compulsory acquisition, and the tribunal therefore lacks jurisdiction to entertain the dispute. However, this court has jurisdiction to adjudicate claims arising from private land transactions, including those tainted by fraud, misrepresentation, and breach of contract.

Analysis and determination

41. The issues that fall for determination are;
- a. Are the preliminary objections competent?
 - b. Whether the application dated 14/4/25 offends the provisions of Order 51 Rule 4 and Order 9 Rule 1 of the Civil Procedure Rules
 - c. Who meets costs?

Are the preliminary objections competent?

42. The Black's Law Dictionary, 10th Edition defines a Preliminary Objection as; -

“... in a case before an international tribunal, an objection that, if upheld, would render further proceedings before the tribunal impossible or unnecessary.”

43. The parameters of consideration of a preliminary objection are now well settled. A preliminary objection must only raise issues of law. The principles that the court is enjoined to apply in determining the merits or otherwise of the Preliminary Objection were set out by the Court of Appeal in the case of Mukisa Biscuit Manufacturing Co. Ltd vs. West End Distributors Ltd [1969] EA 696. At page 700 Law JA stated:

“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. Examples are an objection to the Jurisdiction of the court or a plea of limitation, or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration.”

44. At page 701 Sir Charles Newbold, P added:

“A Preliminary Objection is in the nature of what used to be a demurrer. It raises a pure point of law which is usually on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of Judicial discretion...”

45. Additionally, in the case of Avtar Singh Bhamra & Another... Vs...Oriental Commercial Bank, Kisumu HCCC No.53 of 2004, the court held that:-

“A Preliminary Objection must stem or germinate from the pleadings filed by the parties and must be based on pure points of law with no facts to be ascertained.”

46. From the foregoing, the test to be applied in determining a proper preliminary objection can be deduced as follows; -

i) A preliminary Objection must be a pure point of law which if argued may dispose of the entire suit.

ii) A Preliminary Objection should be based on the presumption that the pleadings and or facts as pleaded by the opposite side are correct or agreed facts.

iii) A Preliminary Objection cannot be entertained where;

a. The facts are disputed/contested.

b. The facts are liable to be contested.

c. Facts are to be proved through process of evidence.

d. What is sought is an exercise of judicial discretion of the court.

47. Having the above in mind, I will now embark on the inquiry into whether the preliminary objections are properly before this court.

48. Compulsory acquisition of land, also known as police power, is a creature of statute. The legal framework is set out in Sections 107-133 of the Land Act. I can do better by adopting the layout in the case of *Patrick Musimba v. National Land Commission & Others* (2016) EKL.R, where the court stated;

“In summary, the process of compulsory acquisition now runs as follows; Under Section 107 of the Land Act, the National Land Commission (the 1st Respondent herein) is ordinarily prompted by the national or county government through the Cabinet Secretary or County Executive member respectively. The land must be acquired for a public purpose or in public interest as dictated by Article 40(3) of the Constitution. In our view, the

threshold must be met: the reason for the acquisition must not be remote or fanciful. The National Land Commission needs to be satisfied in these respects and this it can do by undertaking the necessary diligent inquiries including interviewing the body intending to acquire the property.

Under Sections 107 and 110 of the Land Act, the National Land Commission must then publish in the gazette a notice of the intention to acquire the land. The notice is also to be delivered to the Registrar as well as every person who appears to have an interest in the land.

As part of the National Land Commission's due diligence strategy, the National Land Commission must also ensure that the land to be acquired is authenticated by the survey department for the rather obvious reason that the owner be identified. In the course of such inquiries, the National Land Commission is also to inspect the land and do all things as may be necessary to ascertain whether the land is suitable for the intended purpose: see Section 108 of the Land Act.

The foregoing process constitutes the preliminary or pre-inquiry stage of the acquisition.

The burden at this stage is then cast upon the National Land Commission and as can be apparent from a methodical reading of Sections 107 through 110 of the Land Act, the landowner's role is limited to that of a distant bystander with substantial interest.

Section 112 of the Land Act then involves the landowner directly for purposes of determining proprietary interest and compensation. The section has an elaborate procedure with the National Land Commission enjoined to gazette an intended inquiry and the service of the notice of inquiry on every person attached. The inquiry hearing determines the persons interested

and who are to be compensated. The National Land Commission exercises quasi-judicial powers at this stage.

On completion of the inquiry the National Land Commission makes a separate award of compensation for every person determined to be interested in the land and then offers compensation. The compensation may take either of the two forms prescribed. It could be a monetary award. It could also be land in lieu of the monetary award, if land of equivalent value, is available. Once the award is accepted, it must be promptly paid by the National Land Commission. Where it is not accepted then the payment is to be made into a special compensation account held by the National Land Commission: see Sections 113- 119 of the Land Act.

The process is completed by the possession of the land in question being taken by the National Land Commission once payment is made even though the possession may actually be taken before all the procedures are followed through and no compensation has been made. The property is then deemed to have vested in the National or County Government as the case may be with both the proprietor and the land registrar being duly notified: see Sections 120-122 of the Land Act.

If land is so acquired the just compensation is to be paid promptly in full to persons whose interests in land have been determined: See Section 111 of the Land Act. This is in line with the Constitutional requirement under Article 40(3) of the Constitution that no person shall be deprived of his property of any description unless the acquisition is for a public purpose and subjected to prompt payment in full of just compensation” . .

49. The dispute mechanism for grievances arising from compulsory acquisitions is set out in Sections 133 A-E of the Land Act. I shall reproduce the sections for emphasis.

“133C. Jurisdiction of the Tribunal(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 in the prescribed manner.(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 provisions 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 the Fair Administrative Action Act or any other law.133D. Appeals

SUBPARA (1)A party to an application to the Tribunal who is dissatisfied with the decision of the Tribunal may, in the

prescribed time and manner, appeal to the court on any of the following grounds—SUBPARA (a)the decision of the Tribunal was contrary to law or to some usage having the force of law; SUBPARA (b)the Tribunal failed to determine some material issue of law or usage having the force of law; or SUBPARA (c)a substantial error or defect in the procedure provided by or under this Act has produced error or defect in the decision of the case upon the merits. SUBPARA (2)An appeal from the decision of the Tribunal may be made on a question of law only.”

50. The Land Act has an inherent three-tier dispute resolution mechanism domiciled at the NLC as the first port of call, then a first appeal to the LAT and a second appeal to the ELC.

51. The mandate of the court, as set out in the constitution, has been operationalized under Section 13 of the ELC Act, which elaborately provides for the jurisdiction of the Court that;

13. Jurisdiction of the Court

(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.;

52. From the foregoing, it is not in dispute that the ELC Court enjoys both original and appellate jurisdiction to hear matters of environmental and land law, including those of a constitutional nature.

53. The Court has appellate jurisdiction with respect to appeals from subordinate courts and tribunals in matters that fall within the ELC's jurisdiction. Section 16A of the Environment and Land Court Act provides as follows:

(1) All appeals from subordinate courts and local tribunals shall be filed within a period of thirty days from the date of the decree or order appealed against in matters in respect of disputes falling within the jurisdiction set out in section 13(2) of the Environment and Land Court Act, provided that in computing time within which the appeal is to be instituted, there shall be excluded such time that the subordinate court or tribunal may certify as having been requisite for the preparation and delivery to the appellant of a copy of the decree or order.

(2) An appeal may be admitted out of time if the appellant satisfies the court that he had a good and sufficient cause for not filing the appeal in time.

54. The court's jurisdiction aside, Article 159 of the Constitution mandates the court to actively promote alternative dispute mechanisms and where other mechanisms are provided to exhaust any available dispute resolution options. The exhaustion doctrine

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 interests within the mechanisms in place for resolution outside the courts. The exhaustion doctrine acts as a safeguard to delay judicial consideration of cases to ensure that a party is vigilant in protecting his interests within the channels available for dispute settlement methods. In this way, the doctrine promotes an efficient justice system and an autonomous administrative state. See the case of NGOs Co-ordination Board -vs- EG & 4 Others; Katiba Institute (Amicus Curiae) [2023] KESC 17 (KLR),

55. The Supreme Court of Kenya explained the importance of the doctrine in the case of Benard Murage -vs- Fine Serve Africa Limited & 3 Others [2015] eKLR in the following words:

“Where there exists an alternative remedy through statutory law, then it is desirable that such statutory remedy should be pursued first.”

56. The 16th, 18th Defendants and the 1st Interested Party and 3rd Interested Party have argued that the transaction, the basis of the Plaintiffs' claims, was a compulsory acquisition by the 16th Defendant, and that the NLC and the LAT are clothed with the mandate to determine the claims in line with the provisions of Sections 112 and 133 of the Land Act. The court was implored to apply the exhaustion doctrine to allow the claim to be adjudicated under the framework set out in the Land Act. In other words, the objections challenge this court's mandate to hear and determine the matter before it.

57. By way of background, the Plaintiffs assert that they are members of the 1st Defendant and that the 2nd to 14th Defendants are members and officials of the 1st Defendant. It is also averred that the 1st Defendant was allocated parcel L R No 2935, measuring 168 acres, by the Nairobi City County. That part of the land measuring 93

acres was earmarked for compulsory acquisition by the 16th Defendant.

58. Subsequently, correspondence took place between the NLC, the Nairobi City County, and the acquiring authority, culminating in a public hearing on 8-10th June 2015 at the NHIF Auditorium.

59. It is noteworthy that the Plaintiffs have not raised any objections to the acquisition process outlined in Sections 107-133 of the Land Act and set out in detail at para 49 of this Ruling. Such objections would concern whether the intention to acquire the land compulsorily was lawfully published, whether the public inquiry was conducted, whether the land acquired was correctly valued, and whether the rights of parties with proprietary interests were violated. It is to be noted that the Plaintiffs themselves confirmed that a public inquiry was held at the NHIF Auditorium.

60. It is therefore the Plaintiffs' assertion that the process was tainted by illegality, characterised by secrecy, exclusion from negotiations, unequal and partial distribution of compensation, and overall mismanagement and misappropriation of funds and proceeds following the acquisition. It is contended that these claims fall outside the scope of the mandate of LAT, as they are multifaceted, and that the exceptions to the doctrine of exhaustion should be applicable in this context.

61. In their supplementary submissions, the Plaintiffs observed that, since the transaction involved a sale and purchase, it did not constitute a compulsory acquisition. Consequently, the LAT lacked jurisdiction to hear the matter. The 2nd IP endorses the Plaintiffs' position.

62. It is to be recalled that in the case of *Kibos Distillers Limited & 4 Others -vs- Benson Ambuti Adegga & 3 Others* [2020] EKLK, the apex Court warned courts to be vigilant against parties who may attempt to confer jurisdiction on a court through the art and craft of drafting

pleadings that raise claims in a multifaceted way in order to oust the jurisdiction of any specialized tribunal.

63. From the foregoing, it is evident that the parties have advanced two conflicting positions regarding the nature of the transaction, which forms the basis of the Plaintiffs' claims. The objectors assert that the claims arise from a compulsory acquisition of the land by the 16th Defendant. Conversely, the Plaintiffs' pleadings, as outlined in the plaint dated 14/4/2025, aver that the land was acquired through compulsory acquisition. However, paragraph 23 of the plaint indicates that the Plaintiffs refer to an agreement by the 16th Defendant to purchase the land at Kshs 50 million per acre, along with an offer, sale agreement, and transfer, and state that the execution of these documents was witnessed by one of the law firms representing the 1st Defendant.

64. From the two scenarios before the court, it is evident that these are contested facts. As neither party has placed any documents before the court in support of their assertions, including those relating to compulsory acquisition and/or sale/purchase, the court finds that, in the absence of such documents, it cannot make any finding in favour of either party's propositions as advanced. Even if documents had been annexed, the court would still have been required to consider the evidence to assess whether any objections met the threshold. The evaluation of evidence and/or facts in itself removes the objection from being a purely legal matter.

65. Courts have repeatedly held that when a party raises a preliminary objection that is fact-dependent, the most appropriate course of action is an ordinary application, which permits a party to adduce affidavit evidence in support. These are the inherent limitations of preliminary objections.

66. One of the criteria for establishing a preliminary objection is that it should be founded on the presumption that the pleadings

and/or facts as presented by the opposing party are accurate or agreed upon. Evidently, there is no consensus between the plaintiffs and the objectors regarding the nature of the transaction or the basis for the plaintiffs' claims.

67. In conclusion the court finds that the three objections do not constitute pure points of law and therefore are unmerited.

Whether the application dated 14/4/25 offends the provisions of Order 51 Rule 4 and Order 9 Rule 1 of the Civil Procedure Rules

68. Next, I will now address the objection raised by the 1st Defendant on two grounds: that the Plaintiff's Notice of Motion dated 14/4/25 is fatally defective and contravenes the provisions of Order 51, Rule 4 of the Civil Procedure Rules. Order 51 rule 4 provides as follows;

“Every notice of motion shall state in general terms the grounds of the application, and where any motion is grounded on evidence by affidavit, a copy of any affidavit intended to be used shall be served.”

69. A perusal of the subject application shows that it is supported by the affidavit of Korinke Ole Gisa, sworn on 14/4/2025. For this reason, the court finds that the application is not fatal.

70. The 2nd objection raised by the 1st Defendant concerns prayer No. 16 of the subject application, which it claims offends the provisions of Order 9 rule 1 of the Civil Procedure Rules, which requires applications to be made in the proper manner and by duly authorized persons. That the prayer for payment of fees ought to have been canvassed by way of taxation of costs and not stealthily sneaked in an interlocutory application.

71. At first glance, in order for the court to resolve this objection, it must assess evidence concerning the nature of the claim and its

probity. Consequently, these considerations transcend a purely legal point, which would dispose of the objection.

72. Final orders for disposal

- a. Consequently, I find the Preliminary objections dated the 16/6/25, 19/6/25 and 12/5/25 unmerited and are hereby dismissed.
 - b. Costs shall be in the cause
73. Orders accordingly

DELIVERED, DATED AND SIGNED AT NAIROBI THIS 19TH DAY OF FEBRUARY 2026 VIA MICROSOFT TEAMS.

**J. G. KEMEI
JUDGE**

Delivered in the presence of:-

1. Ms Ogema HB for Prof PLO Lumumba SC for the Plainitffs
2. Ms Arum HB for Mr Nzakyo for the 1st Defendant
3. Ms Ngeno HB for Ms Tusiime for the 16th Defendant
4. Mr Ochieng HB for Prof Ojienda SC for the 18th Defendant

5. Mrs Muiruri & Mr Chumo Kibet for the 1st IP
6. Mrs Kosgei for the 2nd IP
7. Ms Nduku HB for Ms Wangoi
8. Mr Bundotich for the 10th IP
9. CA - Ms Yvette

ORIGINAL FILE COPY