



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT & LAND COURT**

**AT MILIMANI**

**ELC PETITION NO. 3 OF 2017**

**IN THE MATTER OF ARTICLE 10,20,21,22,23,40,47,258 OF THE CONSTITUTION OF KENYA 2010**

**AND**

**IN THE MATTER OF VIOLATION AND INFRINGEMENT OF ARTICLE 40,47, 50 OF THE CONSTITUTION OF KENYA 2010**

**AND**

**IN THE MATTER OF RULE 3(3) (4)(5)4, 13, 23(1)(2) OF THE CONSTITUTION OF KENYA RULES**

**IN THE MATTER OF THE SECTIONS 107-118 OF LAND ACT NO. 6 OF 2012**

**IN THE MATTER OF SECTION 13 OF THE ENVIRONMENT AND LAND COURT ACT NO. 19 OF 2011**

**BETWEEN**

**KIPKAI ENTERPRISES LIMITED.....PETITIONER**

**VERSUS**

**KENYA URBAN ROADS AUTHORITY.....1<sup>ST</sup> RESPONDENT**

**NATIONAL LANDS COMMISSION.....2<sup>ND</sup> RESPONDENT**

**INTERWAYS WORKS LTD.....3<sup>RD</sup> RESPONDENT**

**JUDGMENT**

1. The Petitioner is the registered owner of LR No. 209/12147 (suit property). In or around 2015, the National Government started the process of constructing a link road connecting Hospital road and Mbagathi way through Kenya Urban Roads Authority (KURA).

On 18<sup>th</sup> December 2015, the National Land Commission (NLC) published Gazette Notice No. 9340 in which it expressed its intention to acquire a portion of the suit property measuring 0.0498 hectares for KURA to construct the said road.

2. On 12<sup>th</sup> August 2016, the NLC published Gazette Notice Number 6441 in which it called affected persons to go for hearing of claims for compensation. As the name of the Petitioner was not indicated on the Gazette notice, the Petitioner did not attend the hearing of claims for compensation.

3. After the process of acquisition was completed, KURA contracted Interways Works Limited (contractor) to construct the link road. The contractor moved its heavy machinery to the suit property and started construction of the link road. On 9<sup>th</sup> February 2017, a director of the Petitioner who was driving by the suit property noticed the heavy machinery on the suit property. He inquired as to why the heavy machinery was on the suit property and was told that the suit property had been compulsorily acquired and the contractor had been instructed to build a link road connecting Hospital road and Mbagathi Way.

4. The Petitioner then sought to know why part of its land had been compulsorily acquired without it being notified or paid compensation.

The Petitioner was taken round in circles and this is what prompted the Petitioner to file this petition claiming that its constitutional rights had been violated.

5. The Petitioner had filed a petition and a notice of motion seeking conservatory orders. When the notice of motion came up for hearing the Advocates for KURA and NLC as well as that of the Petitioner were negotiating a settlement. The negotiations did not finally bear any fruits. Though the Petitioner had been given an award which it accepted, compensation was never paid to the Petitioner despite NLC confirming that the compensation funds had been deposited in its accounts.

6. The Petitioner therefore contends that its Constitutional rights under Article 40 of the Constitution have been violated Article 40 (3) of the constitution provides as follows:-

***“The State shall not deprive a person of property of any description, or of any interest in, or right over, property of any description, unless the deprivation—***

***(a) results from an acquisition of land or an interest in land or a conversion of an interest in land, or title to land, in accordance with Chapter Five; or***

***(b) is for a public purpose or in the public interest and is carried out in accordance with this Constitution and any Act of Parliament that—***

***(i) requires prompt payment in full, of just compensation to the person; and***

***(ii) allows any person who has an interest in, or right over, that property a right of access to a court of law.”***

7. The Respondents filed replying affidavits to the notice of motion for conservatory orders. As the issue of negotiations came in, there were no affidavits filed in respect of the petition. The parties were directed to file written submission in respect of the petition but it is only the Petitioner which filed submissions. The only issue for determination in this petition is whether the Petitioner’s Constitutional rights under Article 40 of the Constitution were violated and if so whether the Petitioner is entitled to compensation.

8. There is no doubt that a portion of the Petitioner’s land measuring 0.0498 was compulsorily acquired for construction of a link road linking Hospital road and Mbagathi way. There is also no doubt that the said road is complete. Where a person’s land is acquired compulsorily for a public use as in this case, Article 40(3) (b) (i) of the Constitution obligates the state to give prompt and full compensation to the person.

9. A portion of the Petitioner’s land was acquired in accordance with the provisions of the Land Act. Section 111 (i) of the Land Act provides as follows:-

***“If land is acquired compulsorily under this Act, just compensation shall be paid promptly in full to all persons whose interests in the land have been determined.”***

10. The NLC confirmed that the acquired land belonged to the Petitioner. The NLC called for funds from KURA which funds were deposited in the account of NLC. The NLC called for funds from KURA through its letter dated 8<sup>th</sup> December, 2017. KURA through its letter dated 12<sup>th</sup> July, 2018 confirmed to NLC that it had processed Kshs.70,759,500/= which had been deposited in its account at the National Bank of Kenya.

11. Despite NLC receiving the compensation funds, the Petitioner has not been paid. Initially, the NLC was doubting whether the Petitioner was the rightful owner of the suit property. After the NLC conducted due diligence and after calling the Petitioner to provide documentation pertaining the land, NLC confirmed that the Petitioner was the rightful owner of the suit property.

This being the case, NLC was under obligation to make prompt payment to the Petitioner. As no payment has been made, I find that the Petitioner’s Constitutional right to prompt payment has been violated.

12. The Petitioner had been awarded Kshs.70,759,500/=. This money was deposited in the account of NLC. As the amount was not paid to the Petitioner, under Section 117 of the Land Act, the NLC was under obligation to open a special account into which it shall pay interest on the amount awarded at the prevailing bank rates from the time of taking possession until the time of payment.

13. The NLC was notified that KURA had deposited Kshs.70,759,500/= in its account at National Bank of Kenya. This communication was made on 12<sup>th</sup> July, 2018. The amount deposited in the NLC account is the amount which was contained in the award which had been accepted by the Petitioner despite the Petitioner not being involved in the process leading to the award. The Petitioner is seeking general damages in addition to the amount of compensation. The law is that there can be no award of general damages in addition to quantified damages.

The Petitioner’s land had been valued at Kshs.70,759,600/=. The Petitioner cannot be given general damages in addition to the quantified value of the land acquired. I therefore find that the Petitioner is entitled to Kshs.70,759,600/=.

14. I therefore make an order that the National Land Commission do pay the Petitioner Kshs.70,759,500/= together with interest at Court rates with effect from 12<sup>th</sup> July, 2018 until payment in full. The National Land Commission shall also pay the costs of this petition.

**Dated, Signed and delivered at Nairobi on this 13<sup>th</sup> day of June, 2019.**

**E.O.OBAGA**

**JUDGE**

In the presence of Mr. Mogere Petitioner, Mr. Kamau for Mr. Eredi for 1<sup>st</sup> Respondent and M/s Nafula for Mr. Njuguna for 3<sup>rd</sup> Respondent.

Court Assistant Hilda.