

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT MIGORI**  
**ENVIRONEMNT AND LAND COURT APPEAL NO. E041 OF**  
**2025**

**BENARD OTIENO ANYUOR.....1<sup>ST</sup>**  
**APPELLANT**

**ANYUOR NICHOLAS ODHIAMBO.....2<sup>ND</sup>**  
**APPELLANT**

**VERSUS**

**CHIEF EXECUTIVE OFFICER,**  
**NATIONAL IRRIGATION AUTHORITY.....1<sup>ST</sup>**  
**RESPONDENT**

**NATIONAL IRRIGATION AUTHORITY.....2<sup>ND</sup>**  
**RESPONDENT**

*(Being an Appeal from the Judgement and Decree of the Land  
Acquisition Tribunal in TRLAP No. E102 of 2025 delivered on the  
8<sup>th</sup> December 2025)*

**JUDGEMENT**

**1.** The Appellants approached the Land Acquisition Tribunal at Nairobi by way of an Application seeking, in a nutshell, to enforce costs awarded by the Tribunal in Ngoje & 6 others v National Irrigation Authority & another (Tribunal Case E008, E004, E005, E006, E007, E009, E010 & E011 of 2024 (Consolidated) [2024] KELAT 810 (KLR) (14 June 2024) (Judgment) vide an Originating Motion dated 25<sup>th</sup> September 2025.

- 2.** In the affidavit in support of the Application, the Appellant pleaded that the tribunal had a duty and obligation to enforce its decisions, judgement and orders and to ensure compliance. Further, that there was a public legal duty conferred by law on the Respondents, and owed to the decree holder, and requiring them to pay the decretal debt to and thus he was owed a clear right, to the performance of that duty to effect payment to him. He deponed that he had satisfied all conditions precedent, including making of a prior demand for payment and a reasonable time to comply with the demand had been given to the Respondents and there is outright and express refusal to perform a public duty on their part.
- 3.** He urged that he had no other avenue for recovery of the amounts adjudged in his favour. That he had made an application for warrants of attachment and warrants of sale to recover a sum of Kshs. 50,000/- which had been awarded to him in Nairobi ELC Miscellaneous Civil Application No. E168 of 2024, but the application was declined and it was directed that he proceeds by way of mandamus, which he did, through Nairobi ELC JR NO E045 of 2025 which is pending before that court.
- 4.** He laid down the background of the matter and urged that the decree and orders of the Land Acquisition Tribunal awarding costs and interest at court rates of 14% were never challenged by the 2<sup>nd</sup> Respondent. He urged the court allow the application and protect his constitutional rights.
- 5.** The Respondent then filed a Notice of Preliminary Objection dated 10<sup>th</sup> November 2025 which was, essentially, on the

point of law that the tribunal lacked the jurisdiction to determine the Application. Vide the decision dated 8<sup>th</sup> December 2025, the Tribunal dismissed the application, holding that it lacked the jurisdiction to adjudicate on it and thereby struck it out.

6. Being aggrieved with the decision of the tribunal, the Appellant instituted the present appeal vide a Notice and Memorandum of Appeal dated 10<sup>th</sup> December 2025 premised on the following grounds

**a) The tribunal erred in law in upholding the preliminary objection as had been taken, and, urged before it by the Respondents, and on the basis that judicial review orders could only be accessible to the Appellants pursuant to Order 53 of the Civil Procedure Rules, 2010 and only at the High Court, exercising its jurisdiction, under Article 165 and not in the manner as the Appellants had invoked.**

**b) The Tribunal, in declining jurisdiction, and in failing to determine the originating motion on its merit, and in the manner it did, violated the Appellants rights under Articles 47, 48 and 50(1) of the constitution, and failed to take into account the provisions of sections 4, 7(l)(b), (2) jo, (3), section 9, and 11 of the Fair Administrative Actions Act, and Rules 1, 2, 3, 4, 5, 8, 9, 11,18 and 27 of the Fair Administrative Action Rules.**

**c) The Tribunal erred in law in holding that in the peculiar circumstances as was before it, it did not**

**have jurisdiction to hear and determine the originating motion dated 25<sup>th</sup> September 2025, which motion had simply sought its intervention to have its own earlier and previous decision and orders, enforced and actualized.**

**d) The Tribunal could, only further err when it held that the Appellants only remedy and recourse for enforcing decisions of the Land Acquisition Tribunal was through the procedure set out in Order 53 of the Civil Procedure Rules, 2010, thereby subordinating the provisions of Articles 23(2)(3), 47(1), (2) (3), 48, 50(1) and 159(2) (d) of the Constitution and Section 7 of the Fair Administrative Actions Act, sections 133 D, of the Land Act, section 21(3) (4) of the Governments Proceedings Act and Rule 11 of the Fair Administrative Actions Rules, 2024, which the Appellants had invoked to move the Tribunal, to the provisions of Order 53 of the Civil Procedure Rules, 2010, which, is a subordinate legislation and which the Appellants had not invoked at all.**

**e) The Tribunal erred when it held that it had no jurisdiction, in principle, to entertain enforcement proceedings of its own decisions, by way of judicial review, and when the subject matter related to its own previous orders, while such jurisdiction flows from its statutory mandate under the Land Act and is consistent with its own previous decisions which were made before it, and in the process failed to**

**preserve its dignity, integrity, and effectiveness as a specialized dispute resolution forum.**

- f) In declining jurisdiction and declining to seize the opportunity as the originating motion had presented to it to enforce its own previous decisions and orders and to give effect to the Appellants rights as were implicated, in the said motion, the Tribunal abdicated its jurisdiction as a court and an adjudicatory judicial forum and thus exercised judicial power and authority in a manner that does not advance the purpose and principles of the constitution, thus failed to have regard to the rule of law, and to protect, defend and preserve the Appellants rights and thus acted contrary to Article 159(2) and violated Article 3(1) of the constitution.**
- g) In declining jurisdiction and striking out the originating motion as was before it to appreciate the nature of the proceedings as had been commenced by the Appellants and thus vindicated the Respondents wilful disobedience to the previous orders of the Tribunal and failed to vindicate the rule of law and to give effect to the Appellants rights under Articles 47(1), 58 and 50(1) of the constitution which had crystalized.**
- h) The decision of the Tribunal in the circumstances has the effect of rendering otiose the previous decision of the Tribunal, as the Appellants had sought to enforce, which decision, shall forever remain a paper judgement not worth the papers it**

**was penned on, an absurd situation to which no judicial forum, should visit upon itself given that there is no any other express statutory provision enabling any other judicial forum, other than the tribunal itself, to enforce decisions of the Tribunal as is presently constituted and operationalized.**

**i) The decision of the Tribunal, was thus contrary to law and to some usage having the force of law.**

**j) The Tribunal failed to determine some material issue of law or usage having the force of law**

**7.** The parties were directed to prosecute the Appeal by way of written submissions.

### **Appellants' Submissions**

**8.** Learned Counsel for the Appellant submitted that the appeal is anchored on the provisions of Section 133D of the Land Act and Rule 31 (1) 121 and 131 of the Fair Administrative Actions Rules, 2024. He laid down the history of the matter up to the impugned ruling on the preliminary objection and proceeded to submit on the issues for determination.

**9.** Counsel listed the issues for determination according to the appellant and proceeded to submit on the same. He urged that jurisdiction on a court or tribunal is conferred by the constitution, legislation or both or in principles set in judicial precedent by superior courts. He cited the decision of the Supreme Court in the case of Samuel Kamau Macharia & Another vs Kenya Commercial, Bank Ltd, & 2 Others (2012) eKLR on jurisdiction and urged that the High Court, in the first place does not have jurisdiction over issues reserved by the constitution itself on other courts, given the

constitutional bar in article 165(5). That the Respondent did not point to any constitutional and or legislative provision specifying that decisions of the Tribunal, are enforced by any other court or tribunal, including by this court. He cited the decision of Judicial Service Commission v Gladys Boss Shollei & Another, Civil Appeal No 50 of 2014 in this regard.

**10.** Counsel submitted that the tribunal was wrong on declining jurisdiction and further that there are both constitutional and statutory provisions that expressly confer jurisdiction on the Land Acquisition Tribunal to hear and determine claims of the Appellants had presented, before it. Further, that the Land Acquisition Tribunal in Dispute No E004 of 2024 between Peter Anyuor Mangira v National Irrigation Authority and National Land Commission awarded costs in its judgement dated 14<sup>th</sup> June 2024 which were subsequently taxed and determined and a certificate of costs issued. A certificate of order against the government dated 16<sup>th</sup> April 2025 was subsequently issued.

**11.** Counsel submitted that it is now settled by several decisions of this court that the Land Acquisition Tribunal is the first port of call as a judicial dispute resolution forum to claims revolving around compulsory acquisition of land, creation of wayleaves and or public rights of way. That it is the same tribunal whose jurisdiction is invoked to enforce awards given as compensation and in most cases, as was brought to its attention, through the order of mandamus.

**12.** Counsel urged that it is absurd that the tribunal declined jurisdiction to enforce its own decision, judgement and orders. Counsel cited the decision in Gabriel Mutava,

Elizabeth Kwini & Mary Martha Masyuki v Managing Director Kenya Ports Authority & Kenya Ports Authority 120161 KECA 411 (KLR) and urged that it is the statutory duty and mandate of the tribunal to enforce its own decision, and not the High, Court as had been purported in the preliminary objection. He stated that an objection that challenged the Tribunal's jurisdiction and directed the Appellants to the High Court, and not even to the ELC, was an idle one and was purposely meant to delay the appellants from realizing their entitlement to the fruits of judgement.

**13.** Counsel urged that the jurisdiction of this court is ousted by dint of Section 133C (6) and (8) of the Land Act and it is only left with the appellate jurisdiction, and thus, this court must enforce its decision. He stated that the proceedings were premised on issues touching on wayleaves which could only be primarily addressed by the Land Acquisition Tribunal. Further, that unless specifically provided for in any other written law, a court or tribunal, as an adjudicatory forum exercising judicial function, has a duty and obligation, to enforce its decisions and thus, the Land Acquisition Tribunal had jurisdiction to determine the originating motion.

**14.** Counsel urged that in section 133A (4) of the Land Act, Parliament gave to the Tribunal jurisdiction to set out and determine its own procedure, and this is a tool that is given to it as an adjudicatory judicial forum for a reason, a resource it can and should have applied to actualize and enforce its decisions, judgement, and orders.

**15.** Counsel urged that the Appellant sought reliefs through Article 47, the Fair Administrative Actions Act and the Fair

Administrative Actions Rules, 2024, including the order of mandamus. That to get an order of mandamus, a party is required to show, inter alia, that he has a clear legal right accruing to him; that the legal right has been violated or breached; that there is a correlative duty incumbent upon the violating party to take action in order to comply with the law; that the violating party has neglected or refused to perform the action; that the duty to perform the action is not optional or discretionary but mandatory, ministerial, and/or administrative; and finally, that the party seeking the remedy in court has no other plain, speedy or adequate remedy readily available to him, in the ordinary course of law. He urged that the appellant met these conditions.

**16.** Counsel urged that the respondents are a Government body and its accounting officer vested with both constitutional and statutory mandates to perform the kind of duty that the appellants were complaining that they failed to perform. He urged that the respondents are shielded from execution by Section 21 of the Government Proceedings Act and therefore they had to approach the same judicial forum.

**17.** Counsel urged that section 133A establishes the Land Acquisition Tribunal, and confers on it powers duties and functions, and further, it was incumbent on the Tribunal to exercise judicial authority in a manner that complies with Article 20 (3) and (4), which it failed to do. Counsel submitted that the jurisdiction under Article 165 of the constitution is a shared jurisdiction since the Constitution confers jurisdiction on other Courts a through legislation, to be enacted by Parliament. In support of this submission

Counsel referred the court to the provisions of Article 23(2). He urged that the use of the phrase "to give original jurisdiction in appropriate cases" is instructive, as it is a recognition that the Constitution has vested original jurisdiction in the Land Acquisition Tribunal just like it has given jurisdiction to the specialized courts of equal status to the High Court established under Article 162. Counsel cited section 133C 6 and 8 of the Land Act in this regard.

**18.** Counsel cited the case of *Benard Murage vs Fine Serve Africa Limited & 3 Others* (2015) eKLR, *NGOs Co-ordination Board vs EG & 4 Others*; *Katiba Institute (Amicus Curiae)* (2023) KESC 17 (KLR) on the use of alternative remedies or dispute resolution forums where they exist in statute.

**19.** Counsel urged that Article 23(3) of the constitution is clear on the appropriate reliefs which can be granted by a court. He cited the decision in *Samuel Ndimu Mbugua v National Land Commission* [2024] eKLR in this regard and reiterated that the Land Acquisition Tribunal is the first dispute resolution mechanism established under the law in case a dispute arises from acquisition of land.

**20.** Counsel urged that since the advent of the Constitution of Kenya 2010, there are two avenues and or distinctive paths which the law allows litigants to apply whenever they wish to access judicial review remedies, and the two paths include the Fair Administrative Actions Act and Rules, anchored on Article 47(1) and (2) of the constitution which is the path that the Appellants chose, as opposed to the common law route which can only be accessed via Order 53 of the Civil Procedure Rules, and anchored on section 8 and 9 of the Law

Reform Act. He cited the decision of the Supreme Court decision in *Dande & 3 others v Inspector General, National Police Service & 5 others* in this regard.

**21.** Counsel urged that the Respondents if they so wished, could only have invoked the provisions of Rule 8(2), (3), and (4) of the Rules and apply for and to justify a transfer but could not have claimed that the Tribunal does not have jurisdiction for the reasons they advanced before the Tribunal. He cited Rule 21 of the Fair Administrative Actions Rules, 2024 and submitted that there is no statutory provision conferring on the ELC, the power to enforce this Tribunals' decision. Counsel prayed the court to allow the appeal, grant the orders sought and award costs to the Appellants.

### **Respondents Submissions**

**22.** Learned counsel for the respondent urged that the the Tribunal rightfully held that it lacked jurisdiction and the decision was properly grounded in law and facts. He urged that a Court cannot act on a matter in which it does not have jurisdiction and placed reliance on the decision of Justice Nyarangi J. in ***Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd [1989] eKLR*** in this regard. Counsel submitted that the jurisdiction of a Court or Tribunal is derived from the Constitution, statute or both. A Court cannot therefore abrogate itself jurisdiction. The Respondents aver that the Tribunal's powers are derived wholly from statute. He cited the decision of the Court of Appeal in ***Samuel Kamau Macharia & Another v Kenya Commercial Bank & 2 Others [2012] eKLR*** in this regard.

- 23.** Counsel submitted that the Land Acquisition Tribunal is established under Section 133A of the Land Act 2012 (as amended by the Land Laws (Amendment) Act 2016). Section 133C (1) of the Act defines the Tribunal's mandate as "To hear and determine appeals from decisions of the National Land Commission relating to the process of compulsory acquisition of land under this Part." The Land Acquisition Tribunal therefore has only appellate and quasi-judicial jurisdiction over disputes arising from decisions of the National Land Commission (NLC) in the compulsory acquisition process, not supervisory jurisdiction over other tribunals, public officers, or state organs.
- 24.** Counsel posited that the Land Acquisition Tribunal, being a creature of statute under Section 133A of the Land Act, can only exercise jurisdiction strictly as conferred by that statute and cannot arrogate to itself powers reserved for the High Court. He reiterated that the Tribunal, therefore, rightfully rejected the invitation to allocate itself powers that are constitutionally and by statute reserved to the High Court. He prayed that this court similarly uphold the law and dismiss the Appellants Appeal by holding that the Law is very specific on the jurisdiction of the Land Acquisition Tribunal and therefore does not allow the Land Acquisition Tribunal to issue the orders under Order 53 of the Civil Procedure Rules.
- 25.** Counsel additionally cited the case of *R Vs Kenya National Examination Council Exparte Geoffrey Gathenji & 9 Others*, Civil Appeal No.266 of 1996 on the remedy of mandamus and urged that the tribunal, in line with the law, refused to assume powers that Parliament has conferred on the High

Court, to wit, the power to issue prerogative orders of Mandamus as set out under, Sections 8 and 9 of the Law Reform Act (Cap 26) which codifies the High Court's jurisdiction to issue the judicial-review orders that replaced the prerogative writs. Further, that Order 53 of the Civil Procedure Rules, 2010 operationalizes the above provisions. He submitted that the statutory language is deliberate and that the Law Reform Act and Order 53 reserve the power to grant mandamus solely to the High Court.

**26.** Counsel placed reliance on the decision of Justice Lucy N. Mbugua where in upholding the power of the Environment and Land Court to enforce an award of the Land Acquisition Tribunal in the case of *Ex Parte Khodiyar Limited v National Land Commission & another* [2024] KEELC 6994 (KLR) held that the Environment and Land Court is the proper forum for the execution proceedings of an award of the Land Acquisition Tribunal.

**27.** Counsel cited Articles 165(6) and (7) of the Constitution of Kenya 2010 and urged that the provisions constitutionally vest in the High Court the exclusive supervisory jurisdiction to issue the prerogative orders of mandamus, certiorari, and prohibition. No Tribunal or Subordinate Court may arrogate such power to itself. He stated that an order of mandamus compels the performance of a public duty imposed by statute and is a supervisory order directed to a public officer or body, requiring performance of a legal duty that has been refused or neglected. The remedy is not discretionary administrative enforcement, but an exercise of the High Court's supervisory jurisdiction. He cited the decision in

Republic v Permanent Secretary, Ministry of State for Provincial Administration & Internal Security ex parte Fredrick Manoah Egunza [2012] eKLR in this regard.

28. Counsel urged that the Appeal is fatally defective and prayed that the Appeal be dismissed with costs to the Respondent.

### **Analysis and Determination**

29. This is an appeal arising from the exercising the discretion: the tribunal did not consider the appeal on merits but rather exercised its discretion and declined jurisdiction. Thus, the principles applicable in determining appeals of this nature are slightly different from those where appeal concern decisions arrived at on merit. For instance, the duty of an Appellate Court in decisions of the latter nature was set out in **Abok James Odera T/A A.J Odera & Associates v John Patrick Machira T/A Machira & Co. Advocates [2013] eKLR** where the court stated as follows-

***“This being a first appeal, we are reminded of our primary role as a first appellate court namely, to re-evaluate, re-assess and re-analyze the extracts on the record and then determine whether the conclusions reached by the learned trial Judge are to stand or not and give reasons either way.”***

30. Also, in **Williamson Diamonds Ltd and another v Brown [1970] EA 1**, the court held that:

***“The appellate court when hearing an appeal by way of a retrial, is not bound necessarily to accept the findings of fact by the trial court***

***below, but must reconsider the evidence and make its own evaluation and draw its own conclusion.”***

**31.** However, where discretion is in issue, the appellate court proceeds on account of and along the principles enunciated in the following cases. In ***Supermarine Handling Services Ltd v Kenya Revenue Authority [2010] KECA 373 (KLR)*** the court held as follows:

***“...Thus, where a trial Court has exercised its discretion on costs, an appellate Court should not interfere unless the discretion has been exercised injudiciously or on wrong principles. Where it gives no reason for its decision the Appellate Court will interfere if it is satisfied that the order is wrong. It will also interfere where reasons are given if it considers that those reasons do not constitute “good reason” within the meaning of the rule”.***

**32.** Also, in ***Supermarine Handling Services Ltd versus Kenya Revenue Authority [2010] eKLR (Civil Appeal 85 of 2006)*** the Court stated: -

***“... Thus, where a trial Court has exercised its discretion on costs, an appellate Court should***

**not interfere unless the discretion has been exercised injudiciously or on wrong principles. Where it gives no reason for its decision the Appellate Court will interfere if it is satisfied that the order is wrong. It will also interfere where reasons are given if it considers that those reasons do not constitute “good reason” within the meaning of the rule”.**

**33.** Similarly, in ***Farah Awad Gullet v CMC Motors Group Limited [2018] eKLR*** the Court of Appeal held that:

***“...the Court of Appeal, in interfering with the exercise of discretion of the trial Judge appealed from, ought to satisfy itself that the exercise of that discretion either way was improper and therefore warrants interference.”***

**34.** Moreover, in ***Edward Sargent versus Chotabha Jhaverbhat Patel [1949] 16 EACA 63***, it was held that there is no bar to an appeal lying to an Appellate Court against an order made in the exercise of judicial discretion, but for the Appeal Court to interfere only if it be shown that the discretion was exercised injudiciously.

35. Furthermore, in ***Mbogo and Another v Shah [1968] EA 93 at 96*** the court held:

***“For myself I like to put it in the words that a Court of Appeal should not interfere with the exercise of the discretion of a judge unless it is satisfied that the judge in exercising his discretion has misdirected himself in some matter and as a result has arrived at a wrong decision, or unless it is manifest from the case as a whole that the judge has been clearly wrong in the exercise of his discretion and that as a result there has been mis-justice.”***

36. Also, in ***Agola v Ngodhe (An administrator to the Estate of Zakayo Ngodhe) (Environment and Land Appeal E025 of 2024) [2025] KEELC 1367 (KLR) (6 March 2025) (Judgment)***, this court stated;

***“As for the instant appeal, it is clear that it arose from the low court’s exercise of discretion. Regarding appeals of such nature, the appellate court will not normally interfere with the discretion of the trial court unless the trial magistrate or judge exercised the***

***discretion wrongly, injudiciously or misdirected himself in some matter thereby arriving at a wrong decision, the decision clearly wrong.”***

**37.** Also, in ***Nyaoke & 7 others v Ayaga (Environment and Land Appeal E024 of 2024) [2025] KEELC 7345 (KLR) (28 October 2025) (Judgment)*** this court held,

***“Again, it is worth of note that this is an appeal that challenges the exercise of discretion by the trial court. The principles that govern the instances that an appellant court may interfere with a decision arrived at by exercise of discretion by a court appealed from are now settled. This court must be cautious in deciding to interfere with the discretion of the trial court. If I must do so, I should not substitute my decision with the that of the trial court. I must consider and find, if I have to overturn that decision, that the trial court failed to act judiciously or was plainly wrong on principles that he proceeded on or considered or failed to consider factors which he ought not or ought to have considered, respectively.”***

**38.** This court will thus proceed along the above latter set of principles. It is my humble view that upon considering the memorandum of appeal, record of appeal and submissions, the germane issue for determination is; **Whether the Tribunal erred in holding that it lacked jurisdiction to issue Judicial Review by way of Orders of Mandamus**

**39.** Jurisdiction has been discussed time and again in quite the number of celebrated cases. In ***Owners of Motor Vessel "Lilian S" v Caltex Oil (Kenya) Limited (1989) 1 KLR*** the Court dealt with a court, jurisdiction thus:

***"Jurisdiction is everything. Without it, a court has no powers to make one more step. Where a court has no jurisdiction there would be no basis for a continuation of the proceedings pending other evidence. A court of law downs its tools in respect of the matter before it the moment it holds the opinion it is without jurisdiction.....where a court takes it upon itself to exercise jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before Judgement is given".***

**40.** In the case of ***Samuel Kamau Macharia & Another vs Kenya Commercial Bank Limited & Others (2012) eKLR*** it was held:

***"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 to itself jurisdiction exceeding that which is conferred upon it by law. .... the court must operate within the constitutional limits. It cannot expand jurisdiction craft or innovation."***

**41.** In ***Orange Democratic Movement v Yusuf Ali Mohamed & 5 others [2018] eKLR***, the Court of Appeal further stated:

**“(44) ... a party cannot through its pleadings confer jurisdiction to a court when none exists. In this context, a party cannot through draftsmanship and legal craftsmanship couch and convert an election petition into a constitutional petition and confer jurisdiction upon the High Court. Jurisdiction is conferred by law not through pleading and legal draftsmanship. It is both the substance of the claim and relief sought that determines the jurisdictional competence of a court...”**

**42.** I must fore mostly state that the purpose of judicial review is to ensure that the decisions made by quasi-judicial bodies, including the Tribunal the instant Appeal emanates from, are made in accordance to the process set out in law. And it this can only be made by a court which has authority and is of a higher hierarchy than the body against which the orders of mandamus are sought. A tribunal cannot arrogatye this power to issue orders of such nature over its own orders. Under recent jurisprudence, the courts can also conduct a merit review of the decision but the issue herein is purely on

jurisdiction and not whether the issue merited judicial review. In this regard, the Appellants' Contention is that the Tribunal has the power to issue judicial review orders of mandamus.

**43.** I have perused the Applicants' Application in the Tribunal, the lengthy depositions in the Supporting Affidavit and the equally lengthy submissions and the crux of the Application was that the Applicant sought to have the Tribunal issue orders of Mandamus. However, the Appellant has muddled the issue of mandamus with that of enforcement of a decision (its own) with the aim of arrogating the jurisdiction to issue judicial review orders to the Land Dispute Tribunal.

**44.** The jurisdiction of the Court to determine issues under Judicial Review is governed by various legislation and Constitution 2010. Starting with Article 47 of the Constitution, it provides as follows;

**(1) Every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.**

**(2) If a right or fundamental freedom of a person has been or is likely to be adversely affected by administrative action, the person has the right to be given written reasons for the action.**

**(3) Parliament shall enact legislation to give effect to the rights in clause (1) and that legislation shall**

—

**(a) provide for the review of administrative action by a court or, if appropriate, an independent and impartial tribunal; and**

**(b) promote efficient administration.**

**45.** It is under the provisions of this Article that the Fair Administrative Action Act came to life. Does the Land Acquisition Tribunal have the mandate then to issue orders of judicial review such as mandamus just because it is an independent and impartial tribunal?

**46.** Further, Articles 165(6) and (7) of the Constitution provide as follows;

**(6) The High Court has supervisory jurisdiction over the subordinate courts and over any person, body or authority exercising a judicial or quasi-judicial function, but not over a superior court.**

**(7) For the purposes of clause (6), the High Court may call for the record of any proceedings before any subordinate court or person, body or authority referred to in clause (6), and may make any order or give any direction it considers appropriate to ensure the fair administration of justice.**

**47.** Article 162(2)(b) of the Constitution gives this court of equal status as the high Court to exercise similar supervisory jurisdiction over courts and tribunals that handle disputes of the nature of land and environment. By virtue of Article 165(5)(2) the fact that the jurisdiction of the High Court is ousted over matters that do not fall under its jurisdiction, it goes without saying that it cannot exercise the supervisory

jurisdiction over courts and tribunals that handle matters excluded from its jurisdiction. The Article provides that,

***“The High Court shall not have jurisdiction in respect of matters— (b) falling within the jurisdiction of the courts contemplated in Article 162(2).”***

**48.** It is from these provisions that the High Court derives the jurisdiction to determine an Application for, and issue Judicial Review orders. Similarly, the courts of equal status to the High Court so derive their mandate.

**49.** The Land Acquisition Tribunal handles disputes regarding land acquisition. The Jurisdiction of the Tribunal is set out in section 133C of the Land Act which provides 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 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.**

**50.** Where there is a matter of compulsory acquisition of land and the acts alleged relate to the two provisions specified in the state, then the Fair Administrative Action Act provisions would apply. Does enforcement of costs arise from Article 23(2) and 47(2) of the Constitution? In my humble view, it does not. How does delay in payment of costs, even though

they were awarded by the Tribunal amount to a violation of the constitutional provisions under Articles 23(2) and 47(2)? I do not see any basis.

**51.** Issues that fall under that category and which the Tribunal should determine are handled by the said body in the substantive matter and not when it (the Tribunal) has made its determination on the same and awarded costs, as was in the instant case though relating to the land acquisition. By coming back for enforcement of the orders for costs through other means, the applicants were having their cake and eating it or so to say having a second bite at the cherry. That is unprocedural.

**52.** The substantive issue in the Application before the tribunal were Judicial Review Orders of Mandamus. Additionally, the Appellant had sought declaratory orders with regards to the violation of his Constitutional rights under various Articles of the Constitution. That of itself, if the complaint related to it, that provides the jurisdiction was not.

**53.** From a plain reading of section 133C of the Land Act, it is apparent that the tribunal does not have the jurisdiction to issue judicial review orders or make any findings on constitutional violations save for determining a complaint under Article 23(2) and article 47(3) of the Constitution is when the same relates to compulsory acquisition of land. The Appellant sought enforcement of payment of costs which cannot be interpreted to relate to compulsory acquisition of land in any way shape or form. Costs relate to the proceedings and not the subject matter of the proceedings. It therefore follows that the orders for judicial review as sought

by the Appellant were not within the scope of the provisions of Section 133C (8) of the Land Act.

**54.** The correct manner for the Appellant to seek Judicial Review Orders is through the High Court, a process which, from the pleadings and submissions of the Appellant, he is well aware of and has sought for vide Nairobi ELC JR NO E045 of 2025. Having considered the submissions of the parties, it is my considered view that the tribunal was correct in its finding that it did not have the jurisdiction to determine the application before it.

**ii) Whether the tribunal had jurisdiction to issue declaratory orders on constitutional violations**

**55.** I have alluded above to the proper procedure on this issue. But suffice it to add that the Appellant had sought that the tribunal issue declaratory orders on Constitutional violations arising from various actions and omissions including the failure of the Respondents to settle the costs that were awarded, the creation of wayleaves without just compensation among a number of other reliefs sought under the ambit of Constitutional violations alleged therein.

**56.** The jurisdiction on determining whether there has been violation of the Constitution is derived from Article 165(3) of the Constitution which provides as follows;

**(3) Subject to clause (5), the High Court shall have**

—

**(a) unlimited original jurisdiction in criminal and civil matters;**

**(b) jurisdiction to determine the question whether a right or fundamental freedom in the Bill of Rights has been denied, violated, infringed or threatened;**

**57.** I am cognizant of the provisions of Article 23(2) of the Constitution which provides as follows;

**(2) Parliament shall enact legislation to give original jurisdiction in appropriate cases to subordinate courts to hear and determine applications for redress of a denial, violation or infringement of, or threat to, a right or fundamental freedom in the Bill of Rights.**

**58.** The key words in the provision above is 'in appropriate cases' which, in my view are instructive. The provision is a recognition that the Constitution as it currently stands, and in the absence of legislation under Article 23(2), has vested original jurisdiction in the High Court and courts of equal status to the High Court to determine applications for redress of violation or threatened violation of fundamental rights save for, I reiterate, determining a complaint under article 47(3) of the Constitution, when the same relates to compulsory acquisition of land. From a reading of Article 133C, there is no jurisdiction vested in the tribunal to determine issues pertaining to the violation of the Constitution as pleaded in the Appellants' Application.

**59.** Having considered the submissions of the parties, the law and precedents, it is my considered view that the tribunal was correct in its finding that it did not have the jurisdiction to determine the application before it.

**60.** The upshot of the foregoing is that the Appeal lacks merit and is hereby dismissed with costs to the Respondents.

**Judgment dated, signed and delivered virtually via the Teams Platform this 9<sup>TH</sup> day of March 2026.**

**HON. DR. IUR FRED NYAGAKA  
JUDGE**

**In the presence of,**

Mr. Odera Advocate holding brief for Ms Awuor for the Appellant

Mr. Ochola Advocate for the Respondents.