



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT THIKA

JUDICIAL REVIEW NO. E003 OF 2025

**IN THE MATTER OF AN APPLICATION BY THE NATIONAL
LAND COMMISSION FOR LEAVE TO APPLY FOR JUDICIAL
REVIEW AND AN ORDER FOR MANDAMUS**

AND

**IN THE MATTER OF ARTICLE 67 OF THE CONSTITUTION OF
KENYA, 2010**

AND

**IN THE MATTER OF SECTION 78 OF THE LAND LAW
AMENDMENT ACT, 2016**

AND

**IN THE MATTER OF SECTIONS 107 & 111 1(A) OF THE LAND
ACT NO. 6 OF 2012**

AND

**IN THE MATTER OF ORDER 53 OF THE CIVIL PROCEDURE
RULES, 2010**

BETWEEN

REPUBLIC.....APPLICANT

AND

**THE COUNTY GOVERNMENT OF
KIAMBU.....RESPONDENT**

KENYA RURAL ROADS AUTHORITY.....1ST

INTERESTED PARTY

**DOMINIC MBUGUA WAINAINA.....2ND INTERESTED
PARTY**

**JULIUS KIIRU MWAURA.....3RD INTERESTED
PARTY**

**VERONICA MBUTU NJUNGE.....4TH INTERESTED
PARTY**

EX PARTE: NATIONAL LAND COMMISSION

RULING

1) Pursuant to Article 67 of the Constitution of Kenya 2010, Sections 8 & 9 of the Law Reform Act, Cap 26, Order 53 Rules 1 & 2 of the Civil Procedure Rules, 2010, Section 78 of the Land Laws Amendment Act, 2016, Sections 107 and 111 of the Land Act, 2012, Section 13 of the Environment and Land Court Act, the Applicant filed this Notice of Motion pursuant to leave granted by Judge Mogeni on 26/06/2025.

The Applicant seeks the following orders:

1. That a Judicial Review order of Mandamus be issued directing and compelling the Respondent to forthwith furnish the commission with the money required to pay the 2nd to 4th Interested Parties for the compulsory acquisition of their land, Thika Link Road E1507.

2. An order of mandamus be issued directing and compelling the Respondent to directly pay the 2nd to 4th Interested Parties compensation as ordered by Justice Gacheru and Kemei in **Thika ELC Case No. 94 of 2018** for the compulsory acquisition of their land.
 3. Costs of the Application in favour of the Applicant.
- 2) The application is based on the 21 grounds on the face of the application.
 - 3) The Court issued directions on filing of written submissions and only the Applicant filed their submissions dated 17/11/2025 which I have considered.
 - 4) The Applicant, National Land Commission submitted that the primary objective of their application is to obtain an Order of Mandamus against the Respondent County Government of Kiambu.
 - 5) A brief background of the case is that the Land belonging to the 2nd to 4th Interested Parties was acquired for the Thika Link Road E1507. And in the Judgment delivered in **Thika ELC Case No. 94 of 2018**, the Court awarded the Interested Parties a total of **Ksh 38,914,300.80** inclusive of interest and costs as compensation.
 - 6) Despite issuance of a previous order of mandamus against the Applicant to pay this sum, the Applicant argues they cannot comply because the Respondent, Kiambu County who took over the road project has failed to provide the funds.

- 7) In the circumstances, the Applicant's CEO faces imminent civil jail through contempt proceedings filed on 10/07/2025, for a debt the Applicant lacks the legal and financial capacity to pay independently.
- 8) Part of the Applicant's submissions is that under Section 111(1A) of the Land Act, the acquiring body has a mandatory duty to deposit compensation funds with the Commission before any award or payment is made. That evidence from the 2018 case confirmed the road project was formally transferred to the County Government. Therefore, the Respondent is the acquiring body who then carries the primary fiscal responsibility.
- 9) The Applicant further submits that under the Fourth Schedule of the Constitution, county roads are the responsibility of County Governments. That by withholding funds, the Respondent is violating the Interested Parties' rights under Article 40(3) on protection from deprivation of property without just compensation.
- 10) According to the Applicant they argue that under the Public Finance Management (PFM) Act and Article 207 of the Constitution, they cannot lawfully reallocate their own budget to pay for a county project. Since spending money without specific appropriation or approval from the Controller of Budget would be an illegal act. Therefore, the Applicant is statutorily disabled from paying until the Respondent deposits the said funds with the Applicant.

- 11) The Applicant asserts they have met the three-fold test for Mandamus which is:
- i. To show that there is a specific statutory duty that exists for the Respondent to fund the acquisition.
 - ii. The Respondent has ignored repeated requests and a final Court Judgment.
 - iii. Ordinary execution such as attachment of asset is ineffective against public funds, and the Applicant has no other way or remedy to compel the Respondent to act.
- 12) The Applicant concludes that the Respondent's inaction has paralyzed the legal process and unfairly exposed the Commission to contempt of Court. They pray that the Court issues the Order of Mandamus to compel the Respondent to release the funds, thereby upholding the rule of law and satisfying the 2018 Decree.

Analysis and Determination

- 13) Now having considered the application, annexures and the Applicant's submission, I note the issues that fall for determination are:
- i. Whether the Respondent is the Acquiring Authority legally obligated to fund the compensation.***
 - ii. Whether the Applicant (NLC) can be held liable for non-payment in the absence of funds from the Respondent.***

iii. Whether the legal threshold for the issuance of an Order of Mandamus has been met.

14) Section 111(1A) of the Land Act, as amended by the Land Laws (Amendment) Act 2016, creates a mandatory condition precedent for compensation. It provides:

"The acquiring body shall deposit with the Commission the compensation funds ... before the Commission awards and pays compensation."

15) In **Mohamed Abdi Osman v National Land Commission [2020] eKLR**, the Court affirmed that the NLC's role is administrative. The NLC cannot print money; it acts as a conduit. The fiscal burden remains with the body for whose benefit the land is acquired.

16) The Respondent, the **County Government of Kiambu**, took over the Thika Link Road project from the 1st Interested Party. Under the Fourth Schedule, Part 2 of the Constitution, county roads are a devolved function. Having assumed control of the project, the Respondent assumed the status of the Acquiring Body.

17) Article 40(3) of the Constitution prohibits the deprivation of property unless it is for a public purpose and upon prompt payment of full just compensation. The Court notes the precedent in **Mandev Limited v Kenya National Highways Authority & Another (Land Acquisition Case E023 of 2024) [2025] KELAT 117 (KLR) (10 February 2025) (Judgment)** which held that failure to honor

compensation awards is a direct violation of constitutional property rights.

- 18) Applying the test in **Kenya National Examinations Council v Republic Ex parte Geoffrey Gathenji & Others [1997] eKLR**, the Court stated:

“And order of mandamus compels the performance of a public duty imposed by statute where the person or body on whom the duty is imposed fails or refused to perform the same.”

- 19) Therefore, this Court finds upon applying the above standard that:

- a) A Public Duty exists under Section 111(1A) of the Land Act.
- b) There is failure to perform the said public duty since the Respondent has ignored the 2018 decree and subsequent demands.
- c) That the Applicant is currently facing contempt charges for a financial impossibility. **Mandamus is the only tool to break this deadlock.**
[Emphasis Added]

- 20) I am of the view that the Applicant’s submissions are persuasive. A public body cannot evade a statutory duty through silence, nor can it shift the burden of its financial obligations onto an administrative commission. To allow the status quo to persist would be to sanction sanctified disobedience of Court orders.

- 21) Accordingly, I do order as follows:

- i) A Judicial Review order of mandamus is hereby issued directing the Respondent, the County Government of Kiambu to forthwith furnish the Applicant the National Land Commission with the sum of Ksh 38,914,300.80 plus accrued interest from the date of the Judgment for the compensation of the 2nd to 4th Interested Parties.***
- ii) In the alternative, the Respondent is directed to pay the 2nd to 4th Interested Parties the said compensation directly within thirty (30) days of this order.***
- iii) All contempt proceedings and findings against the Applicant's CEO arising from Thika ELC Case No. 94 of 2018 are hereby stayed pending the Respondent's compliance with these orders.***
- iv) Costs of this application are awarded to the Applicant to be paid by the Respondent.***

It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIRIOBI ON THIS 11TH DAY OF MARCH 2026.

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**MOGENI J
JUDGE**

In the presence of:

.....for Ex Parte Applicant

.....for Respondent

.....for 1st Interested Party
.....for 2nd Interested Party
.....for 3rd Interested Party
.....for 4th Interested Party
Melita.....Court Assistant

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MOGENI J
JUDGE

ORIGINAL