REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELCLA NO. E118 OF 2025

NATIONAL LAND COMMISSION ..... APPELLANT

=VERSUS=

CHARLISE DEVELOPMENT COMPANY LIMITED ..... RESPONDENT

((Being an appeal from the Ruling of the Land Acquisition Tribunal delivered by Dr. Nabil Orina and George Supeyo on 24th June 2025 in Land Acquisition Case No. TRLAP E044 of 2024)

JUDGMENT

Introduction

1. This is a first appeal against the entire ruling and orders of the Land Acquisition Tribunal delivered by **Dr. Nabil Orina and George Supeyo on 24th June 2025 in Land Acquisition Case No. TRLAP E044 of 2024.** Vide the said ruling, the Tribunal dismissed the Appellant's Notice of Motion dated 6th March 2025, which sought inter alia; the joinder of Kenya Railways Corporation, the National Police Service and the Attorney General as interested

parties, together with a review and/or variation of the Tribunal's substantive judgment delivered on 7th February 2025. The Tribunal also discharged the interim stay that had been granted and made no order as to costs.

2. Being aggrieved by that decision, the Appellant filed the instant appeal.

Background

3. The dispute centers on the compulsory acquisition of the entire suit property known as L.R. No. 209/13761, Embakasi, Nairobi, measuring approximately 7.569 hectares, for the construction of the Standard Gauge Railway. The acquisition process commenced with Gazette Notice No. 7090 dated 10th October 2014, followed by Gazette Notice No. 5486 dated 15th July 2016. The Respondent, claiming to be the registered proprietor, lodged a complaint before the Tribunal on 25th September 2024 seeking compensation. The Appellant opposed the complaint through a replying affidavit sworn on 9th December 2024.

4. In its judgment of 7th February 2025, the Tribunal found that the Appellant had infringed the Respondent's rights under Articles 40 and 47 of the Constitution of Kenya 2010

by failing to pay just compensation. It awarded Kshs. 712,380,000 as compensation, interest from 10th October 2014 and general damages, culminating in a total exposure asserted by the Appellant of Kshs. 1,016,087,000.

5. Aggrieved by that outcome, the Appellant filed the Notice of Motion dated 6th March 2025 seeking, inter alia: (i) joinder of the three Interested Parties; (ii) review and/or variation of the judgment to disallow the Respondent's claim and declare that the Respondent held no valid title; and (iii) stay of execution pending review. The application was predicated on the alleged discovery of new and important evidence said to be unavailable earlier despite due diligence, including documents showing the suit property belonged to the National Police Service, prior approval of compensation to the National Police Service of Kshs. 1,654,458,500, and the lapse of the Respondent's 1998 allotment letter.
6. The Appellant contended that payment of the judgment sum would amount to an unconstitutional dissipation of public funds contrary to **Articles 201 and 210 of the**

Constitution and the Public Finance Management Act.

7. The Tribunal dismissed the application, holding that the threshold for review under **Section 80 of the Civil Procedure Act and Order 45 Rule 1 of the Civil Procedure Rules** had not been met and that post-judgment joinder served no purpose.

Grounds of appeal

8. The Appellant's Memorandum of Appeal dated 10th July 2025 raises twenty-six grounds which, though overlapping can be crystallised into the following core grounds;

   i) The Tribunal erred in fact and in law by holding that the application for joinder failed to meet the requisite threshold despite the Interested Parties having a direct substantial and subsisting interest in the suit property.

   ii) The Tribunal misdirected itself in law and on the facts by failing to find that sufficient cause existed for review under Section 80 of the Civil Procedure Act and Order 45 Rule 1 of the Civil Procedure Rules on the twin grounds of discovery of new and important evidence and other sufficient reason,

iii) The Tribunal erred in failing to appreciate that it had not become functus officio, the review application being still pending before it, the Tribunal failed to find that the Respondent's title was invalid ab initio, having lapsed under the self-executing clause in the 1998 allotment letter, and that the suit property was public land previously allocated to the National Police Service.

iv) The Tribunal erred in sanctioning payment of a colossal sum of public funds on a fictitious claim, contrary to public policy, the Public Finance Management Act and the constitutional imperative of prudent utilisation of public resources.

v) The Tribunal failed to properly evaluate the evidence, took extraneous unpleaded matters into consideration and arrived at a decision that was perverse.

9. The Appellant prays that the Tribunal's ruling of **24th June 2025** be set aside and substituted with an order granting the entire Notice of Motion dated **6th March 2025** with costs.

Directions of the court

10. Upon admission of the appeal, it was directed that the appeal be disposed of by way of written submissions. The Appellant filed written submissions dated **9th December 2025** while the Respondent filed a Preliminary Objection dated **23rd July 2025** together with submissions dated **12th February 2025.**

The Appellant's case and submissions

11. The Appellant urges the Court to overrule the Preliminary Objection, contending that **Section 133D(1) of the Land Act** expressly permits appeal on grounds that the decision was contrary to law, failed to determine a material issue of law, or involved procedural error**. The word "may" in Section 133D(2)** renders the provision permissive, and the appeal is a first appeal as of right in a compulsory acquisition matter as affirmed in the case of **Ngoje & 7 Others versus National Irrigation Authority & Another (Civil Appeal E090 & E097 of 2024 (Consolidated) [2025] KEELC 771 (KLR).**

12. On review, the Appellant submits that it satisfied the statutory threshold by discovering critical documents, correspondence from the Ministry of Interior, proof of prior compensation to the National Police Service, and the

lapsed allotment letter which could not reasonably have been produced earlier.

13. The Appellant relies on **Section 80 of the Civil Procedure Act and Order 45 Rule 1 of the Civil Procedure Rules** and the case of **Mbau Saw Mills Ltd versus Hon. Attorney General, Commissioner of Lands, Karatina Town Council and Geoffrey Karungaru Kabua [2014] KEHC 4946 (KLR)** to argue that the Respondent's title was void ab initio**.**

14. On joinder, the Appellant invokes **Order 1 Rule 10(2) of the Civil Procedure Rules** and the decision in **Meenye & Kirima Advocates versus Gathoni Limited; Isabiriye & 2 others (Intended Interested Party) (Environment & Land Miscellaneous Case 39 of 2016) [2023] KEELC 18524 (KLR),** asserting that the Interested Parties are necessary for effectual adjudication and to uphold the right to fair hearing under **Article 50 of the Constitution.**

15. Finally, the Appellant contends that allowing payment of over Kshs. 1 billion on a fraudulent claim would violate **Articles 201 and 210 of the Constitution and the Public Finance Management Act.**

The Respondent's case and submissions

16. The Respondent maintains that the appeal is incompetent. **It** contends that **Section 133D(2) of the Land Act** limits appeals from the Tribunal to questions of law only, yet the Memorandum of Appeal is replete with factual complaints. Further, the appeal challenges a secondary post-judgment ruling rather than the substantive decision, and no leave was obtained.

17. The Respondent relies on the principle in the case of **Solomon Boit versus Evaline Cheutich Kumin and 2 others [2025] eKLR** that the right of appeal is purely statutory.

18. On the merits, the Respondent argues that the review application was a disguised attempt to re-open a concluded matter, that the alleged "new" evidence was always within the Appellant's possession or could have been obtained with due diligence, and that post-judgment joinder would condemn the Respondent unheard contrary to **Article 50 of the Constitution.**

19. The Respondent further submits that the Tribunal correctly applied the strict principles governing review and that the application was an abuse of process.

Issues for determination.

20. Arising from the Memorandum of Appeal, the Preliminary Objection and the rival submissions, the following crisp issues fall for determination:

i) **Whether the appeal is competent and properly before this Court.**

ii) **Whether the Tribunal erred in law and fact by refusing to enjoin the three Interested Parties.**

iii) **Whether the Tribunal erred in law and fact by dismissing the application for review.**

iv) **Whether the Appellant established sufficient cause for review on the grounds of discovery of new and important evidence, error apparent on the record, or any other sufficient reason.**

v) **What relief, if any, should issue?**

Analysis and determination

Issue 1: Competence of the Appeal

21. **Section 133D(1) of the Land Act** enumerates the three permissible grounds upon which a party dissatisfied with a decision of the Land Acquisition Tribunal may appeal: that the decision was contrary to law or usage having the force of law; that the Tribunal failed to

determine some material issue of law or usage having the force of law; or that a substantial error or defect in the procedure produced an error on the merits. Subsection (2) provides that an appeal from the decision of the Tribunal may be made on a question of law only.

22. The Respondent's Preliminary Objection is anchored on the assertion that all twenty six grounds are factual and that the appeal challenges a secondary ruling without leave. As was stated in the case of **Kenya Breweries Limited versus Godfrey Odoyo [2010] eKLR,** an appellate court must confine itself to questions of law and must not re-evaluate evidence afresh unless the decision is shown to be perverse. This position was recently reinforced by the Environment and Land Court in the case of **Simandi Investments Limited & another versus Macharia & 6 others [2026] KEELC 890 (KLR),** where the Court emphasised that **Section 133D** restricts appellate intervention to legal errors in compulsory acquisition matters, thereby preserving the specialised role of the Tribunal while allowing correction of misdirections on law. In the case of **Mutua & 197 others versus Athi Water Services Board [2026] KEELC 274**

(KLR), the Court further clarified that a ruling on review qualifies as a "decision" appealable under Section 133D(1), particularly where it engages constitutional questions of fair administrative action under **Article 47.**

23. However, the present appeal is a first appeal in proceedings originating from compulsory acquisition. In the case of **Ngoje & 7 Others versus National Irrigation Authority & Another (supra),** this Court confirmed that such appeals lie as of right before the Environment and Land Court.

24. A careful reading of the Memorandum of Appeal reveals that, while many grounds are prefixed with the words "erred in fact and in law", the substance of the complaints turns on the Tribunal's interpretation and application of statutory provisions and constitutional imperatives. These are quintessentially questions of law. Regarding the Respondent's contention that **Section 133D(2) of the Land Act** imposes a rigid bar, this Court finds that the misapplication of the **Review Test** under Order 45 is itself a legal misdirection**. The statutory use of the word "may" in Section 133D(2)** refers to the party's right to move the court, but even if the restriction

to "questions of law" is interpreted as mandatory, this appeal qualifies as it challenges the Tribunal's legal adherence to the principles of finality and the standard of due diligence.

25. In view of the foregoing, it is the finding of this court that the Preliminary Objection therefore lacks merit and is overruled. The appeal is competent.

Issue 2: Joinder of the Interested Parties

26. **Order 1 Rule 10(2) of the Civil Procedure Rules** confers discretionary power to join a necessary party whose presence is required for the effectual and complete adjudication of all questions involved in the suit. The Appellant correctly points out that the 1st Interested Party is the project beneficiary, the 2nd Interested Party claims prior ownership and receipt of compensation, and the 3rd Interested Party represents the Government's interest in public funds. However, in the instant case, the application for joinder was filed after the Tribunal had delivered a final judgment on the merits and assessed compensation.

27. The doctrine of functus officio is a cornerstone of judicial finality. Once a tribunal pronounces judgment, it exhausts its jurisdiction in the substantive matter save for

limited residual powers such as correction of accidental slips or review where the strict statutory threshold is satisfied.

28. As was stated in the Supreme Court decision in **Francis Karioko Muruatetu & Another versus Republic & Others [2016] eKLR**, post-judgment joinder cannot be used to introduce new parties who did not themselves seek intervention and whose alleged interest could and should have been canvassed during the main hearing. This principle was emphatically reiterated by the Supreme Court in the case of **Everton Coal Enterprises Limited versus Rose Wakanyi Karanja & 5 Others [2023] KESC 98 (KLR),** where the Court held that joinder after final judgment is exceptional and impermissible where it seeks to re-litigate resolved issues or where the proposed parties failed to apply independently. The Environment and Land Court applied this reasoning in the case of **Meenye & Kirima Advocates versus Gathoni Limited (supra),** distinguishing pending proceedings from concluded ones, and more recently in **Marisia & 2 others versus Kalungokor [2025] KEELC 564 (KLR),**

where post-judgment applications were struck out for want of jurisdiction.

29. It is also noteworthy that the Interested Parties filed no independent application. To allow joinder at this stage would not only convolute concluded proceedings but would also infringe the Respondent's right to a fair hearing. The Appellant's argument that the "Public Interest" and the protection of public funds under **Article 201** should override these procedural boundaries is noted. However, the rule of law and the principle of finality in litigation are, in themselves, matters of high public interest. If state agencies were allowed to re-open concluded cases due to their own administrative lethargy, the resulting legal instability would be more detrimental to the public interest than the specific financial exposure in this suit.

30. The Tribunal therefore correctly declined joinder. No error of law or fact is disclosed.

Issue 3 & 4: The Application for Review and Sufficiency of Cause

31. **Section 80 of the Civil Procedure Act and Order 45 Rule 1 of the Civil Procedure Rules** provide three

exhaustive grounds for review: discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the applicant's knowledge or could not be produced at the time the decree was passed; mistake or error apparent on the face of the record; or any other sufficient reason. The application must further be made without unreasonable delay.

32. The Appellant's case rests primarily on the first and third grounds. It asserts that critical documents, internal correspondence, the 1998 allotment letter containing the self-executing lapse clause, and proof of prior compensation to the National Police Service were discovered only after judgment.

33. The Appellant attributes the non-production to "inadvertence of counsel" and "bureaucratic delay" in sourcing inter-ministerial documents.

34. Kenyan jurisprudence has consistently set a high bar for the "new evidence" ground. The evidence must not only be new but must also be such that it could not, with the exercise of reasonable diligence, have been discovered or produced at the original hearing. Inadvertence, negligence or laxity on the part of a party or

its advocate does not constitute due diligence. As was held in the Environment and Land Court in the case of **Macharia versus Maina & 3 others [2025] KEELC 834 (KLR),** the grounds under Section 80 and Order 45 are restrictive, and the applicant bears a heavy burden to demonstrate both novelty and due diligence; mere assertions of bureaucratic delay or counsel's inadvertence are insufficient. This position aligns with the Court of Appeal's reasoning in **David & 2 others versus Bakaya [2025] KEHC 12790 (KLR),** where a review application was dismissed for failure to show that the evidence could not have been obtained earlier despite multiple opportunities.

35. The Appellant, as the acquiring authority, was at all material times in possession of its own records. The National Land Commission is the constitutional custodian of public land records; it cannot claim to have "newly discovered" from its own records a 1998 allotment letter or 2017 correspondence. To hold otherwise would be to lower the threshold of "due diligence" to a standard of "mere convenience," which is not the intent of Section 80 of the Civil Procedure Act.

36. Even assuming the evidence was “new”, the validity of the Respondent’s title was a live issue. Regarding the alleged "lapsed allotment letter," it is trite law that an allotment letter is merely a letter of offer. However, where a formal Title or Grant has already been issued as is the case here a lapsed allotment letter serves only as a collateral attack on the registration. Such a challenge must be mounted through a fresh suit for cancellation of title under Section 80 of the Land Registration Act, not as a post-judgment patch-up in a compensation claim.

37. The Appellant’s reliance on "sufficient reason" under the umbrella of public interest is a "Catch-22" of its own making. While the Court is a guardian of public resources, it cannot be used as a refuge for an acquiring Authority that failed to present its best case during the trial. No error apparent on the face of the record has been demonstrated.

Issue No. 5: Reliefs sought and costs

38. The Appellant in this appeal sought the following principal reliefs: that the ruling of the Land Acquisition Tribunal delivered on 24th June 2025 be set aside in its entirety; that the Appellant’s Notice of Motion dated 6th

March 2025 be allowed in full, including the joinder of the three Interested Parties; that the judgment of the Tribunal delivered on 7th February 2025 be reviewed and/or varied by disallowing the Respondent's claim in its entirety and declaring that the Respondent held no valid title to L.R. No. 209/13761; and that the costs of the application before the Tribunal and of this appeal be awarded to the Appellant.

39. Having carefully considered the record and the law, the Court finds that the Appellant is not entitled to any of the reliefs sought. As demonstrated in the preceding analysis, the Tribunal committed no error of law or fact in declining to enjoin the Interested Parties after a final judgment had been delivered, nor did it err in finding that the Appellant failed to meet the stringent threshold for review under **Section 80 of the Civil Procedure Act and Order 45 Rule 1 of the Civil Procedure Rules.** The purported new evidence was either within the Appellant's knowledge or could have been obtained with reasonable diligence before the original hearing.

40. The validity of the Respondent's title was a central issue that was canvassed and determined by the Tribunal.

A review application cannot be used as a disguised appeal or to re-open concluded proceedings. Consequently, there is no legal or factual basis upon which this Court can interfere with the Tribunal's ruling or grant the orders prayed for by the Appellant.

41. On costs, the award of costs would normally be guided by the principle that costs follow the event: the effect being that the party who calls forth the event by instituting proceedings will bear the costs if the proceedings fail. Nevertheless, this is not an invariable rule. In the present appeal, the Court is satisfied that there is good reason to depart from the general rule. In exercise of its discretion, and consistent with the approach of the Supreme Court in **Standard Chartered Financial Services Limited versus Manchester Outfitters (Suiting Division) Limited & 2 others (Petition E012 of 2024) [2025] KESC 68 (KLR) (delivered on 14th November 2025),** where the Court directed each party to bear its own costs bearing in mind the circumstances of the matter and the principles on the award of costs enunciated in **Rai & 3 others v Rai & 4 others [2013]**

KESC 20 (KLR), the Court directs that each party shall bear its own costs of this appeal.

Final Orders

42. In the premises, and for the reasons alluded to, the final orders that commend themselves to the court are as hereunder: -

(i) The Appeal be and is hereby dismissed.

(ii) Each party to bear own costs of the Appeal.

Dated, Signed and Delivered Virtually this 16th day of April 2026.

E. K. WABWOTO
JUDGE

In the presence of:-

Ms. Olalo for the Appellant.

Mr. Thuita for the Respondent.

Court Assistant: Mary Ngoira and David Ngoosa.