

**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KAJIADO**

**ELC CASE NO. 929 OF 2017**

**ANNE WAMBUI GATHERU ..... 1ST**

**PLAINTIFF/APPLICANT**

**DAVID NDIRANGU WAMBUGU ..... 2ND**

**PLAINTIFF/APPLICANT**

**VERSUS**

**KENYA RAILWAYS CORPORATION ..... 1ST**

**DEFENDANT/RESPONDENT**

**CHINA COMMUNICATIONS CONSTRUCTION**

**COMPANY LIMITED ..... 2ND**

**DEFENDANT/RESPONDENT**

**RULING**

*(In respect of the Notice of Motion application dated 28/07/2025 seeking leave to amend the  
plaint as well as transfer of the matter to the land acquisition tribunal)*

**Introduction**

1. This Ruling pertains to the Notice of Motion application dated **28th July 2025**, brought by the Plaintiffs/Applicants (*hereinafter referred to as "the Applicants"*) under the provisions of Sections 1A, 1B, and 3A of the Civil Procedure Act, Order 1 Rule 15(1) of the Civil Procedure Rules, 2010, and all other enabling provisions of the law.
2. By way of the said Application, the Applicants seek the following specific orders from this Court:

(a) **THAT** leave be and is hereby granted to the Plaintiffs/Applicants to amend the Complaint dated 14th November, 2017 in accordance with the Draft Amended Complaint annexed to the Supporting Affidavit of Anne Wambui Gatheru.

(b) **THAT** the annexed Draft Amended Complaint be deemed as duly filed and served.

(c) **THAT** the Honourable Court be pleased to grant an order directing that the dispute be referred to the **Land Acquisition Tribunal** for hearing and determination.

(d) **THAT** the costs of this Application be provided for.

3. The Application is supported by the Affidavit of the 1st Applicant, **ANNE WAMBUI GATHERU**, sworn on **25th July 2025**, together with the grounds set out on the face of the Motion and the annexures thereto.
4. The Applicants' case is anchored on the premise that the original Complaint, filed on 14th November 2017, no longer captures the grievances or the questions in controversy with sufficient precision. The Deponent avers that the amendments are necessary to facilitate the final and effectual determination of all matters in the suit and to introduce additional parties who will be directly affected by the orders of this Court, specifically the **National Land Commission**.
5. In her Affidavit, the 1st Applicant deposes that subsequent to the filing of this suit, she engaged the services of experts to ascertain the extent of the interference with the suit property, **L.R. No. KAJIADO/NTASHART/263**, situated in the Kimuka Area. She

relies on a Valuation Report by *COG Consultants Limited* dated **13th March 2023** and a Surveyor's Report by *Geomatic Services Limited* dated **27th February 2023**.

6. According to the Applicants, these reports c *COG Consultants Limited* dated **13th March 2023** and the Surveyor's Report by *Geomatic Services Limited* dated **27th February 2023** confirm that the construction of the Standard Gauge Railway (SGR) line by the 1st Respondent has bisected their land into two portions. It is their contention that this development has rendered a portion measuring approximately **Seven Decimal Zero Six Four (7.064) acres** inaccessible, and another portion measuring **Zero Decimal Four Eight (0.488) hectares** uneconomical for agricultural activities. They are therefore entitled to compensation which they wish to pursue before the Land Acquisition Tribunal.
7. Consequently, the Applicants seek to amend their pleadings to reflect these developments and to claim compensation and thereafter have the amended claim referred to the Tribunal. Their application is therefore two-pronged; seeking leave to amend the Plaint dated 14th November, 2017, on the one part and an order directing that the dispute to be referred to the **Land Acquisition Tribunal** for hearing and determination on the other part.
8. The Valuation Report annexed to the supporting affidavit proposes that the amount to be awarded as compensation is **Kshs. 21,735,000.00**. Furthermore, the Applicants seek to join the National Land Commission as a party to the suit seeking to compel it to either provide an adequate access road to the inaccessible portion or to bear the costs associated with the same.

9. The Applicants maintain that the application is made in good faith, is timely, and that no substantial prejudice will be occasioned to the Defendants/Respondents, who would be at liberty to amend their Statement of Defence accordingly.
10. The application is vehemently opposed by the 1st Respondent, **Kenya Railways Corporation**, through Grounds of Opposition dated **15th September 2025**. The 1st Respondent contends that the application is unmerited, an abuse of the court process, and is a ploy to unnecessarily protract the litigation.
11. Principally, the 1st Respondent argues that the Applicants' original Plaintiff was founded on a claim of trespass. They aver that the Court of Appeal, in **Civil Appeal No. 97 of 2018**, delivered a judgment on **10th May 2019**, ruling that the claim of trespass had been overtaken by the process of compulsory acquisition. Consequently, the 1st Respondent submits that the proposed amendment is merely reactionary and an afterthought occasioned by the said appellate ruling.
12. The 1st Respondent further asserts that this Honourable Court lacks the requisite jurisdiction to entertain the new issues raised in the Draft Amended Plaintiff. It is their case that the proposed amendments introduce a new cause of action—specifically compensation for compulsory acquisition—which is substantially different from and inconsistent with the original pleadings. They maintain that such claims cannot be adjudicated by this Court in the first instance.
13. Regarding the prayer to refer the dispute to the **Land Acquisition Tribunal**, the 1st Respondent submits that by seeking such a transfer, the Applicants have impliedly admitted that this Court lacks jurisdiction. Furthermore, they contend that the suit is premature because the Applicants failed to exhaust the available administrative remedies

by failing to engage the **National Land Commission** before approaching the Court. The 1st Respondent argues that the Court should not transfer a suit where the Applicants have not proved dissatisfaction with any decision by the Commission.

14. On the part of the 2nd Respondent, **China Communications Construction Company Limited**, the record indicates that they initially opposed the application by way of a Preliminary Objection. However, the said objection was subsequently withdrawn by way of a **Notice of Withdrawal dated 1st October 2025**.

#### **Directions**

15. The Court's directions were that the application be canvassed by way of written submissions. The parties complied by filing their respective submissions which the court has had occasion to read and consider in writing this ruling.

#### **Analysis and Determination**

16. I have judiciously considered the application, the grounds of opposition filed by the 1st Respondent, and the rival written submissions filed by the parties.
17. The central issue falling for determination in this application is **whether this Court has jurisdiction to entertain and allow the proposed amendments and transfer/refer the suit to the Land Acquisition Tribunal in light of the dispute relating to compulsory acquisition of land**.
18. Jurisdiction is the first question that a court must answer before taking any further step in a suit. The locus classicus on this point is the decision in **Owners of the Motor Vessel "Lillian S" vs Caltex Oil (Kenya) Ltd [1989] KLR 1**, where Nyarangi J.A of the Court of Appeal famously stated:

*“Jurisdiction is everything. Without it, a Court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A Court of law downs tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.”*

19. The Supreme Court of Kenya in *Samuel Kamau Macharia & Another vs Kenya Commercial Bank Limited & 2 Others [2012] eKLR* further clarified the source of jurisdiction:

*“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.”*

20. In the present matter, the Applicants seek to amend their Plaint to introduce the National Land Commission as a party and to specifically claim compensation of Kshs. 21,735,000.00 arising from the construction of the Standard Gauge Railway. This amendment fundamentally alters the nature of the dispute from a claim of trespass to a claim for compensation under compulsory acquisition.

21. Indeed, the Court of Appeal in **Civil Appeal No. 97 of 2018**, involving the same parties, observed that the claim for trespass had been "overtaken by the process of compulsory acquisition."

22. The law governing disputes regarding compulsory acquisition is specific and mandatory.

**Section 133C** of the **Land Act, No. 6 of 2012** (as amended by the **Land Value**

**(Amendment) Act No. 15 of 2019)** explicitly sets out the jurisdiction of the Land Acquisition Tribunal. It 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.*

*(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 provision of Sections 127, 128, and 148(5), a matter relating to the 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 Fair Administrative Action or any other law.”*

23. The language of **Subsection (6)** is couched in mandatory terms ("shall") and contains a *non-obstante* clause ("Despite the provision of Sections 127, 128..."). This expressly ousts the original jurisdiction of this Court in matters relating to compulsory acquisition, notwithstanding the general provisions of Section 128 of the Land Act. Parliament clearly intended for the Tribunal to be the court of first instance in these matters, with this Court exercising appellate jurisdiction under **Section 133D**.

24. By seeking to amend the pleadings to introduce the National Land Commission and claims for compensation, the Plaintiffs are, in essence, confirming that the dispute is one of compulsory acquisition. As held in *Mutanga Tea & Coffee Company Ltd v Shikara Limited & Another [2015] eKLR:*

*“A party cannot seek to amend pleadings to introduce a cause of action that the Court had no jurisdiction to entertain in the first place.”*

25. Since the dispute has crystallized into a claim for compensation for land taken for public purpose, it falls squarely within the preserve of the Land Acquisition Tribunal pursuant to Section 133C(6) of the Land Act. This Court cannot entertain the application to amend; neither should it entertain the claim for compensation, as to do so would be to usurp the statutory mandate of the Land Acquisition Tribunal. The proper forum for the Applicants

to ventilate their grievances regarding compensation and severance damages is the Land Acquisition Tribunal.

26. From the foregoing, this court cannot allow an amendment to introduce a cause of action that the Court had no jurisdiction to entertain in the first place. The prayer for amendment therefore must fail.

27. That said, the claim before the court remains as it has always been, a claim for trespass. The import of this is that there is no basis then for referring the matter to the Land Acquisition Tribunal even if the court had the power to so refer the matter.

28. It is upon the Plaintiffs to rethink their litigation strategy and further decide what to do with this suit in view of the observation by the Court of Appeal that that the claim for trespass had been "overtaken by the process of compulsory acquisition."

29. Accordingly, the Notice of Motion application dated **28th July 2025** being the application under consideration is hereby dismissed in its entirety with costs.

It is ordered.

**Dated, Signed and Delivered Virtually this 23<sup>rd</sup> Day of April, 2026.**

**M.D. MWANGI**

**JUDGE**

**In the virtual presence of:**

Mr. Ndungu h/b for Mr. Ochieng for the Plaintiff/Applicant

Mr. Njoroge h/b for Mr. Mutei for the 1<sup>st</sup> Defendant/Respondent

Mr. Masila for the 2<sup>nd</sup> Defendant/Respondent

Court Assistant: Peninah

**M.D. MWANGI**

**JUDGE**

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