

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT OF KENYA AT
SIAYA

ELC CASE NO. E004 OF 2023

JAMES OTIENO OKUDO Suing as the administrator of the estate

**of SAMSOM OKUDO MENYA DECEASED.....
PLAINTIFF**

VERSUS

**NATIONAL LAND COMMISSION.....
DEFENDANTS**

RULING

- 1 The present suit was commenced by way of Plaint dated 26/6/2023 seeking the following orders;-
 - 1) An order directed to the defendant to compensate the plaintiff the true and correct value of the land of Kshs.920,000/
 - 2) An order of permanent injunction restraining the defendant whether by themselves their agents servants or other persons claiming through them from entering upon and taking possession of the or otherwise dealing adversely with the suit property known as SOUTH GEM/NDORI 338 or in any other way interfering with the plaintiffs' interests and privileges incidental thereto until a proper and valuable compensation is done.
 - 3) Damages for trespass
 - 4) Costs of this suit plus interest thereon from the date of filing this suit.

- 2 The plaintiff avers that the parcel SOUTH GEM/NDORI 338 (suit property) has at all material times been registered to SAMSOM OKUDO MENYA (Deceased).
- 3 That in or about July 2019, Kenya Rural Roads Authority (KeRRA) contracted Hayer Bishan Singh & Sons Limited to construct the Kodiaga-Nyangweso-Wagai-Onyinyore/Akala Road. The said road traversed the Plaintiff's land parcel. The construction commenced without the prior consent, knowledge, or authority of the Plaintiff, which the Plaintiff characterised as trespass.
- 4 That following the acts of trespass, the Plaintiff obtained injunctive relief that temporarily halted construction works. Thereafter the 3rd Defendant (NLC) initiated the compulsory acquisition process to regularise the situation. The suit property was gazetted vide Kenya Gazette Notice No. 4640 of 10th July 2020, followed by subsequent Gazette Notices Nos. 5406 of 4th June 2021 and 5721 of 11th June 2021.
- 5 That on 12th August 2021, the 3rd Defendant issued a formal Award (Form LA.35, Ref: NLC/VAL.1597) awarding the Plaintiff a total sum of **Kshs. 263,930/-** in respect of the compulsory acquisition of a portion of the suit land measuring approximately 0.0765 Ha made up of the total value of land assessed at Kshs. 264,500/= and total compensation payable (inclusive of applicable statutory additions) fixed at Kshs. 263,935/=.

- 6 That on 16th August 2021, the Plaintiff formally contested the Award and indicated his intention to appeal to the Environment and Land Court in accordance with Section 128 of the Land Act, 2012. Correspondingly, the NLC issued a Notice of Taking Possession dated 27th September 2021, granting KeRRA access to the site to commence construction forthwith.
- 7 The Plaintiff commissioned an independent valuation by Add Property Consultants (dated 9th December 2020), which assessed the compulsorily acquired portion at 0.5 acres (approximately 0.2 hectares) and pegged the market value of the land at Kshs. 800,000/= plus 15% statutory disturbance allowance of Kshs. 120,000/=, giving a total recommended compensation of **Kshs. 920,000/-**
- 8 The 3rd Defendant responded to the suit by way of amended defence dated 3rd June 2024. It is averred inter alia that the 3rd defendant exercised its mandate and gave an award and the dispute should be referred for review and not new litigation.
- 9 During the pendency of this litigation parties sought to amicably resolve the dispute however a settlement has not been forthcoming except for a fresh survey report undertaken by the 3rd defendant.
- 10 The court on 4/3/2025 directed the parties to file brief submissions by 19/3/2025 for consideration of whether the

court is clothed with jurisdiction in view of the existence of the Land Acquisition Tribunal.

SUBMISSIONS

- 11 The plaintiff filed written submissions dated 14th March 2025 and the defendants 17/3/2025
- 12 The 3rd defendant contends as follows; -
 - i. That the dispute fundamentally arises from the process of compulsory acquisition and is therefore within the exclusive mandate of the Land Acquisition Tribunal established under Section 133A of the Land Act, 2012;
 - ii. That Section 133C of the Land Act explicitly empowers any person aggrieved by a decision of the NLC in compulsory acquisition matters to appeal to the Tribunal; and
 - iii. That the doctrine of exhaustion of alternative remedies requires that the Plaintiff first exhaust statutory mechanisms before invoking the jurisdiction of this Court, relying on **Speaker of the National Assembly v. Karume [1992] eKLR.**
- 13 The Plaintiff submitted that Section 128 of the Land Act provides that "Any dispute arising out of any matter provided for under this Act may be referred to the Land and Environment Court for determination" — expressly conferring jurisdiction on this Court;

- 14 That Section 13 of the Environment and Land Court Act and Article 162(2)(b) of the Constitution confer original jurisdiction on this Court over matters relating to compulsory acquisition of land;
- 15 That the core of the suit is a trespass claim arising from the compulsory acquisition process in which the Defendant acquired a larger portion than what was gazetted and for which it paid manifestly inadequate compensation; and
- 16 That applying the pre-dominant purpose test as settled by the Court of Appeal in **Co-operative Bank of Kenya Limited v Patrick Kang'ethe Njuguna & 5 Others, Civil Appeal No. 83 of 2016 [2017] eKLR**, the pre-dominant issue is one relating to land, trespass, valuation, and just compensation, placing this dispute squarely within the ELC's jurisdiction.

ANALYSIS AND DETERMINATION

- 17 Having considered the foregoing the main issue for determination is Whether this Court has jurisdiction to hear and determine this suit, or whether the dispute falls exclusively within the mandate of the Land Acquisition Tribunal.
- 18 The locus classicus on jurisdiction in Kenyan jurisprudence remains the celebrated dictum of Nyarangi, JA in **Owners of the Motor Vessel 'Lillian S' v Caltex Oil (Kenya) Limited [1989] KLR 1**, where the learned judge stated thus:

"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 in the **Matter of Interim Independent Electoral Commission [2011] eKLR (Constitutional Application No. 2 of 2011)** further affirmed that jurisdiction flows from either the Constitution or legislation or both, and that a court cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law.
- 20 It is therefore incumbent upon this Court to satisfy itself, at the outset, that it possesses the requisite jurisdiction before proceeding further. The Court's jurisdiction in the present matter derives from several constitutional and statutory sources, which must be examined carefully.
- 21 Article 162(2)(b) of the Constitution of Kenya, 2010 establishes the Environment and Land Court as a superior court with the same status as the High Court, mandated to hear and determine disputes:

"...relating to the environment and the use and occupation of, and title to, land."

22 This constitutional mandate is operationalized by Section 13 of the Environment and Land Court Act, No. 19 of 2011, which confers upon this Court jurisdiction over, inter alia:

13. Jurisdiction of the Court

- 1) The Court shall have original and appellate jurisdiction to hear and determine all disputes in accordance with Article 162(2)(b) of the Constitution and with the provisions of this Act or any other law applicable in Kenya relating to environment and land.**
- 2) In exercise of its jurisdiction under Article 162(2)(b) of the Constitution, the Court shall have power to hear and determine disputes—**
 - a. relating to environmental planning and protection, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources;**
 - b. relating to compulsory acquisition of land;**
 - c. relating to land administration and management;**
 - d. relating to public, private and community land and contracts, choses in action or other instruments granting any enforceable interests in land; and**

e. any other dispute relating to environment and land.

3) Nothing in this Act shall preclude the Court from hearing and determining applications for redress of a denial, violation or infringement of, or threat to, rights or fundamental freedom relating to a clean and healthy environment under Articles 42, 69 and 70 of the Constitution.

4) In addition to the matters referred to in subsections (1) and (2), the Court shall exercise appellate jurisdiction over the decisions of subordinate courts or local tribunals in respect of matters falling within the jurisdiction of the Court.

5) In exercise of its jurisdiction under this Act, the Court shall have power to make any order and grant any relief as the Court deems fit and just, including—

- a. interim or permanent preservation orders including injunctions;**
- b. prerogative orders;**
- c. award of damages;**
- d. compensation;**
- e. specific performance;**

- f. restitution;**
- g. declaration; or**
- h. costs.**

23 Additionally, Section 128 of the Land Act, 2012 provides that;

Reference to the Environment and Land Court

Any dispute arising out of any matter provided for under this Act may be referred to the Land and Environment Court for determination.

24 Further, Section 150 of the Land Act preserves the general jurisdiction of this Court over all disputes under the Act as follows;

150. Jurisdiction of the Environment and Land Court
The Environment and Land Court established in [the Environment and Land Court Act \(Cap. 8D\)](#) and the subordinate courts as empowered by any written law shall have jurisdiction to hear and determine disputes, actions and proceedings concerning land under this Act.

25 The competing jurisdictional framework is found in the Land Act, No. 6 of 2012. Part VIII of the Land Act governs compulsory acquisition of land. Specifically, Section 133A of the Land Act establishes the Land Acquisition Tribunal and Section 133C provides for its jurisdiction as follows;

133C. Jurisdiction of the Tribunal

(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.

- 26 The procedure for land acquisition is governed by Sections 107 to 129 of the Land Act, 2012. Upon the NLC making an award under Section 119, a dissatisfied party may invoke Section 133A to 133D to seek a review by the Tribunal. The 3rd defendant relies on Sections 133A, 133C, and 133D of the Land Act, 2012, which establish the Land Acquisition Tribunal, and contends that the Plaintiff was obliged to first appeal to the Tribunal before approaching this, Court. In support, the defendant invokes the doctrine of exhaustion of statutory remedies and cites **Speaker of the National Assembly v. Karume [1992] eKLR**, for the proposition that where a clear statutory procedure exists for the redress of a grievance, that procedure should be strictly followed.
- 27 The Plaintiff has invited this Court to apply the predominant purpose test in determining jurisdiction. This test requires the Court to look beyond the individual prayers to identify the substance and central gravamen of the litigation as a whole. The test is not applied in isolation to each prayer, but holistically to the entire suit. Where the predominant purpose of the suit is a matter within this Court's jurisdiction, the Court should assume and exercise full jurisdiction, even if one or more of the prayers might individually lie within the domain of another tribunal.
- 28 The predominant purpose test has been applied in Kenyan courts. In **Kenya Airports Authority v Mitu-Bell**

Welfare Society & 2 Others [2016] eKLR, the Court of Appeal affirmed that where claims are mixed, touching on both administrative and judicial remedies, the court should examine the character of the primary wrong and the nature of the primary relief sought, rather than parcelling out jurisdiction mechanically.

- 29 The central grievance is not a challenge to the quantum of compensation per se, but a challenge to the extent of the Defendants' occupation of the suit property. The Plaintiff's case is that the Defendants have physically encroached upon a portion of land over and above what was formally acquired.
- 30 The suit seeks orders of injunction and trespass damages and these are remedies that this Court alone can grant. The Tribunal herein cannot award either. Referring this matter to the Tribunal would produce an incomplete outcome: I say so because the Tribunal could review quantum but could neither restrain the ongoing trespass nor compensate the Plaintiff for the tort. The Plaintiff would be driven to commence fresh proceedings in this Court to obtain the injunction leading to multiplicity of proceedings which is also uneconomical both in terms of time and resources.
- 31 The principle against multiplicity of proceedings was cogently stated by Lenaola, J (as he then was, now SCJ) in **Republic v Nairobi City County & Another, Ex Parte Ojwang [2014] eKLR**, where the learned judge observed

that courts must guard against outcomes that compel parties to pursue fragmented litigation in multiple forums where a single court can comprehensively resolve the dispute.

- 31 The 3rd Defendant's position, as pleaded in the Amended Defence, is that it carried out its statutory mandate, made a compensation award, and that the dispute should therefore be channelled to the Tribunal. To me this proposition would have greater force if the Plaintiff's complaint were confined to inadequacy of compensation for the land lawfully acquired. But that is not the Plaintiff's case. The Plaintiff's case includes a complaint of extra-legal occupation, the Defendants taking and holding land that was never part of the acquisition process.
- 32 The Court of Appeal, in **Kenya Power and Lighting Company Limited v Mukhisa Foods Manufacturing Company Limited [2016] eKLR**, held that where a matter involves intertwined claims, some within a tribunal's jurisdiction and some within a court's, it is in the interests of justice for the court of wider jurisdiction to hear the whole matter, to avoid inconsistent findings and to provide complete relief.
- 33 In **Nicholus v Attorney General & 7 others; National Environmental Complaints Committee & 5 others (Interested Parties) (Petition E007 of 2023) [2023] KESC 113 (KLR) (28 December 2023) (Judgment)**, the Supreme Court held that:

[107] Flowing from the above findings and in that context, it is our view that, where the reliefs under the alternative mechanism are not adequate or effective, then there is nothing that precludes the adoption of a nuanced approach, as we have stated. What must matter at the end is that a path is chosen that safeguards a litigant's right to access justice while also recognizing the efficiency and specificity that established alternative dispute resolution mechanisms can offer. This is because, to achieve a harmonious and effective legal framework, it is imperative to strike a judicious balance between the emphasis on providing the initial opportunity for resolution to entities established by law and the assertion of a litigant's right to access the court. However, such convergence requires a case-by-case assessment by considering issues such as the nature of the dispute and the adequacy of the alternative dispute mechanism. See also our decision in *Bia Tosha Distributors Ltd v Kenya Breweries Ltd & 6 Others (Pet.No.15 of 2020) [2023] KESC 14(KLR) (Const. and JR) (17 February 2023) (Judgment)*.

34 The court will be guided accordingly. To sever this litigation, sending the compensation component to the

Tribunal while retaining the trespass and injunction claims, would be to invite precisely the fragmentation, delay, and risk of inconsistent outcomes that the above caselaw caution against. The claims are legally and factually inseparable:

32 This Court has jurisdiction, by virtue of Article 162(2)(b) of the Constitution of Kenya, 2010 and Section 13(2) of the Environment and Land Court Act, No. 19 of 2011, to hear and determine all the claims in this suit. The predominant purpose of this litigation is the resolution of the allegation of encroachment and trespass dispute specifically, the allegation that the Defendants have occupied land beyond the area lawfully acquired and compensated. This is squarely within this Court's jurisdiction over use, occupation, and title to land.

33 Accordingly, this Court finds it has jurisdiction to hear and determine the present suit in its entirety and the matter shall proceed to full hearing on the merits before this Court. There shall be no orders as to costs.

Dated at Siaya this 29th Day of April , 2026

**HON. JUSTICE A. E. DENA
JUDGE
29/04/2026**

Ruling delivered virtually through Microsoft Teams

Video Conferencing Platform in the Presence of:

Ms Raburu holding brief for Mr. Omondi for the plaintiff

Mr Kebi holding brief for Khasoa
Court assistant: Dorothy Awuor

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