REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS

ELC LAND APPEAL NO. E032 OF 2024

KENYA NATIONAL HIGHWAY AUTHORITY……………………. APPELANT

VERSUS

IGAINYA LIMITED…………………………………………….1ST RESPONDENT

NATIONAL LAND COMMISSION…………………………2ND RESPONDENT

JUDGMENT

[(Being an Appeal from the decision of the Land Acquisition Tribunal at Nairobi (Dr. N.M. Orina & Mr. G. Supeyo) dated and delivered on 6 June, 2024 in Tribunal Case No. LAP 02 of 2024 (Igainya Limited vs. The National Land Commission & 2 others, and the County Government of Machakos as an interested party)]

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1. Originally, this case was filed before our court as **ELC petition no. E013 of 2021.** However, with the Land Acquisition Tribunal (LAT) commencing operations on 11 September 2023 under **Section 133A** of the **Land Act,** the petition was transferred to the LAT for its hearing and final determination.
2. In this petition dated 29 July 2021, the 1st respondent stated that it was the registered owner of land parcel no. **L.R. No. 7815/8, originally no. 7815/6/1 ('suit property'),** situated in Lukenya within Machakos County, which was subject to compulsory acquisition. It stated that, in 2017, the 2nd respondent issued a notice of intention to acquire the suit property, with the appellant as the project proponent. Subsequently, an inquiry was conducted, verification was carried out, and an award of Kshs. 646, 316, 243/- was made to it on 23 January 2018, which it accepted and as a result abandoned its anticipated cement project.

3. It accepted the award, and 10% of it was paid to it by the 2nd respondent. Nonetheless, the 2nd respondent had failed and/or refused to settle the remaining 90%, despite reminders. According to it, these actions contravened **Articles 40** and **47** of the **Constitution** and resulted in a loss of opportunity and income, and it prayed for the following orders: -

    a. ***A declaration that the 1st respondent's rights, as enshrined in Articles 40 and 47 of the Constitution, had been violated by the***

appellant, the 2nd respondent, and the Hon. Attorney General.

b. ***A declaration that the 1st respondent was entitled to prompt, just, and adequate compensation in full, within the meaning and scope of Article 40 (3) (b) (i), being the sum of Kshs. 646, 316, 243/- for the compulsory acquisition of its proprietary interests in the suit property.***

c. ***An order of mandamus directing the 1st respondent to immediately execute the award issued on 23 January 2018 and pay the remaining 90% balance.***

d. ***In the alternative, to the aforementioned orders, an order of certiorari to remove into this court to quash the gazette notice no 9536 published on 29 September 2017 and gazette notice no 11424 published on 17 November 2017 by the 2nd respondent, insofar as it relates to the suit property, and to cancel the current compulsory acquisition and reversion of the suit property to it, together with special, general, exemplary, and aggravated damages.***

e. ***Interests and that costs be provided for.***

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4. The petition was strenuously opposed by the replying affidavit of Fidelis K. Mburu, an acting director of valuation and taxation for the 2nd respondent, sworn on 20 September 2021. Although he did not deny the process of compulsory acquisition, the award, or the 10% payment, he argued that certain intervening circumstances subsequently restricted the disbursement of the remaining 90%.

5. He concisely detailed these circumstances in the following manner: Before the 2nd respondent could process and release the 90%, it received a letter from the Ethics and Anti-Corruption Commission (EACC) dated 16th August 2019, which indicated it was investigating fraud in the compensation and compulsory acquisition process. To prevent possible loss of public funds, EACC directed the 2nd respondent to withhold payment until the project-affected persons were verified and a revaluation of the properties was done.

6. Furthermore, the appellant, as the acquiring entity, also notified the 2nd respondent that it had revised the road design for the project, having omitted service roads and reviewed the main road alignment, which required minimal land acquisition. Consequently, a revised acquisition map and schedule of properties were gazetted by notice 1919 of 6 March 2020. This resulted in a re-valuation of Kenya Shillings 123,537,645 for 2.2220 hectares of land compulsorily acquired on the suit property. During this re-valuation, it became evident that the

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suit property had been initially grossly over-valued and that the values had been inflated.

7. The replying affidavit of Milcah Muendo, the appellant's assistant director at the survey department, directorate of highway planning and design, sworn on 17 August 2021, reiterated the 2nd respondent's assertions.

8. In rejoinder to the 2nd respondent's replying affidavit, the 1st respondent, through an affidavit by Eng. Isaac Wanjohi, deposed on 30 September 2021, stated that the 1st respondent was not informed of the road redesign. The revised acquisition map and the schedule of affected properties were prepared without offering the 1st respondent a hearing. Furthermore, the 1st respondent was not given an opportunity to accept or reject the offer. He also stated that the revaluation was arbitrary and unilateral.

9. The matter proceeded by *viva voce* evidence, whereby Isaac Gathungu Wanjohi, for the 1st respondent, testified as PW1, and he relied on the petition and his various affidavits together with the annexures therein. His evidence was led by the expert evidence of Dennis Mutai Bett, a surveyor who testified as PW2. Milcah Muendo (RW1) testified as the appellant's witness. The Hon. Attorney General and the County Government of Machakos, as interested party, did not participate in the hearing.

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10. Subsequently, the impugned judgment was rendered whereby LAT found that the 2nd respondent was under a legal duty to conduct a fresh inquiry and involve the 1st respondent, found that the 2nd respondent failed to afford the 1st respondent a chance to participate in an inquiry by not conducting one after the purported revision of the plan of the project that affected the suit property significantly before a new award was issued and lastly, found variation of the project by the respondent on grounds of reduction of costs was not a plausible excuse. It therefore allowed the petition by granting the following orders: -

a. ***A declaration be and is hereby issued that the appellant, 2nd respondent and Hon. Attorney General violated the 1st respondent's rights under Article 40 and Article 47 of the Constitution of Kenya 2010;***
b. ***An order of certiorari be and is hereby issued quashing gazette notice No. 1919 of 6th March 2020 to the extent that it purported to reduce the amount of acreage of the suit property to be acquired from 5.6861 hectares to 2.222 hectares;***
c. ***An order of certiorari be and is hereby issued quashing the 1st respondent's award issued on 25th June 2021;***

d. An order be and is hereby issued directing the 2nd respondent to pay the 1st respondent, within 30 days hereof, the sum of Kshs. 581,684,619.00 being the balance of the award for compensation issued on 23rd January 2018;

e. Interest on (d) above at court rates until payment in full;

f. Costs of these proceedings shall be borne by the appellant, 2nd respondent and Hon. Attorney General jointly.

11. Dissatisfied, the appellant appealed to this court and filed a memorandum of appeal dated 5 July 2024 and filed on the instant date. Nevertheless, the memorandum of appeal fell short in many aspects. Significantly, the nature and form of a memorandum of appeal is set out in **Order 42 Rule 1 (2)** of the **Civil Procedure Rules** in the following manner: -

> ***"The memorandum of appeal shall set forth concisely and under distinct heads the grounds of objection to the decree or order appealed against, without any argument or narrative, and such grounds shall be numbered consecutively."***

12. The essence of this legislation is to assist the court and involved parties in accurately framing the issues at hand and to identify the fundamental grounds on which the appellant is

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dissatisfied. With due respect to the appellant, several grounds of appeal outlined in the memorandum of appeal did not meet this criterion, as they primarily narrated evidence and presented submissions. Acknowledging this shortcoming, the appellant, in its submissions dated 5 November 2025 by **Ms. Prof. Albert Mumma & Co. Advocates,** condensed the extensive sixteen grounds into three principal grounds, abandoned the evidence and submissions contained therein, and framed the following issues:

- ***a.*** ***Whether the LAT erred in its finding that the remainder of the suit property comprising 56.86 acres was not usable;***
- ***b.*** ***Whether the LAT erred in making a finding that, upon reducing the portion to be acquired, personal service upon the landowner, fresh gazettement and fresh inquiry were required by law;***
- ***c.*** ***Whether the Tribunal acted without a statutory mandate, given that it was not fully constituted as a tribunal.***

13. Accordingly, the appellant urged this court to grant the appeal with costs, set aside the impugned judgment and decree and costs of the LAT case be provided for.

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14. Accordingly, following the court's directions, the appeal was argued through written submissions. In compliance, the appellant's counsel filed submissions as earlier highlighted, whereas counsel **Mr. Peter Wang'ondu** for the 2nd respondent, who supported the appeal, filed written submissions dated 3 December 2025. Concerning the 1st respondent, it was served with documents by the appellant through its law firm on record, **Ms. Triple A Advocates,** which failed to appear in court on several occasions. However, on 24 January 2026, its counsel**, Ms Akello,** was granted a strict 14-day period to file written submissions; nonetheless, at the time of penning this judgment, that period has expired. Thus, should this law firm choose to file submissions subsequently, they will be considered as filed out of time, without requiring further reference to the court.

15. Having examined the abbreviated grounds of appeal, it is incumbent upon this court to preliminarily consider ground (c) concerning LAT's jurisdiction. The appellant contends that at the time the petition was instituted, LAT was not fully constituted. However, in setting out the factual background of this appeal, this court, upon establishing LAT's jurisdiction, transferred the case to its docket on 14 December 2023. Hence, this court is *functus officio* with respect to LAT's jurisdiction, and it is barred from sitting on appeal against its own decision; if aggrieved at the time the court transferred the file, then it was incumbent upon it to seek redress from the

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Court of Appeal, which it did not. Therefore, this court finds this ground of appeal is misplaced. We now proceed.

16. As this is a first appeal, the authority of this court is outlined in **Order 42 Rule 32** of the **Civil Procedure Rules.** Additionally, as an appellate court, this court will not interfere with the impugned judgment unless it is satisfied that the LAT misdirected itself and thereby reached an incorrect decision, exercising its discretion wrongly and causing injustice through such erroneous exercise of discretion. The role of an appellate court was aptly described in the decision of **Watt v Thomas [1947] AC, 484 at p 485,** which was cited with approval in the Court of Appeal decision of **Chief Land Registrar & 4 others v Nathan Tirop Koech & 4 others [2018] eKLR,** thus: -

> ***"Lord Simon's speech in*** **Watt v Thomas [1947] AC, 484 at p 485** ***as follows:***
>
> > ***"….an appellate court has, of course, jurisdiction to review the record of the evidence in order to determine whether the conclusion originally reached upon that evidence should stand; but this jurisdiction has to be exercised with caution. If there is no evidence to support a particular conclusion (and this is really a question of***

law) the appellate court will not hesitate so to decide.

But if the evidence as a whole can reasonably be regarded as justifying the conclusion arrived at the trial and especially if that conclusion has been arrived at on conflicting testimony by a tribunal which saw and heard the witnesses, the appellate court will bear in mind that it has not enjoyed this opportunity and that the view of the trial judge as to where credibility lies is entitled to great weight…"

17. Pointedly, within the legal framework of **Section 133D** of the **Land Act,** the jurisdiction of this court as a first appellate court is limited to issues of law, and this provision states: -

"(1)A party to an application to the Tribunal who is dissatisfied with the decision of the Tribunal may, in the prescribed time and manner, appeal to the court on any of the following grounds—

(a)the decision of the Tribunal was contrary to law or to some usage having the force of law;

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(b)the Tribunal failed to determine some material issue of law or usage having the force of law; or(c)a substantial error or defect in the procedure provided by or under this Act has produced error or defect in the decision of the case upon the merits.

(2)An appeal from the decision of the Tribunal may be made on a question of law only."

18. Regarding the matter at hand, this court has carefully reviewed the records, the impugned judgment, and the filed submissions, and it is the considered view that the issues for determination are the condensed grounds of appeal, which are re-framed as follows: **(a) whether the LAT erred in finding that, upon reducing the portion to be acquired, personal service upon the landowner, fresh gazettement, and fresh inquiry were required by law** and **(b) whether the LAT erred in awarding compensation for unacquired land.** These two issues shall be handled concomitantly.

19. In addressing this matter, it is essential to reinforce the doctrine of eminent domain, which permits the compulsory taking of a person's private property. As this constitutes a significant infringement of proprietary rights, **Article 40** of the

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Constitution delineates the rights related to private land in the context of eminent domain. This **Article** states:

> ***"(1) Subject to Article 65, every person has the right, either individually or in association with others, to acquire and own property—***
>
> ***(a)of any description; and***
>
> ***(b)in any part of Kenya.***
>
> ***(2)Parliament shall not enact a law that permits the State or any person—***
>
> ***(a)to arbitrarily deprive a person of property of any description or of any interest in, or right over, any property of any description; or***
>
> ***(b)to limit, or in any way restrict the enjoyment of any right under this Article on the basis of any of the grounds specified or contemplated in Article 27(4).***
>
> ***(3)The State shall not deprive a person of property of any description, or of any interest in, or right over, property of any description, unless the deprivation—***

(a)results from an acquisition of land or an interest in land or a conversion of an interest in land, or title to land, in accordance with Chapter Five; or

(b)is for a public purpose or in the public interest and is carried out in accordance with this Constitution and any Act of Parliament that—

(i)requires prompt payment in full, of just compensation to the person; and

(ii)allows any person who has an interest in, or right over, that property a right of access to a court of law.

(4)Provision may be made for compensation to be paid to occupants in good faith of land acquired under clause (3) who may not hold title to the land.

(5)The State shall support, promote and protect the intellectual property rights of the people of Kenya.

(6) The rights under this Article do not extend to any property that has been found to have been unlawfully acquired."

20. A careful reading of this statutory provision, particularly **Article 40(3),** demonstrates conformance with **Chapter V** of the **Constitution,** and the public use requirements impose stringent limitations on the governmental authority to acquire private property. To give effect to this **Article**, the Parliament enacted a comprehensive legal framework for compulsory acquisition, as detailed in **Part VIII, Sections 107** to **131** of the **Land Act.**

21. **Section 107** states that whenever the County or National Government needs to acquire land, the Cabinet Secretary or the County Executive Committee member submits a request to the National Land Commission ("NLC"- the 2nd respondent herein). If the NLC determines that the request complies with the requirements of **Article 40 (3)** of the **Constitution,** it proceeds to map and value the land, and ensures that the acquiring authority has identified the number and register of persons in actual occupation of the land.

22. The NLC also establishes the duration of their uninterrupted occupation or ownership interests. Subsequently, the NLC then publishes the intention to acquire the land in the gazette. According to **Section 112**, 30 days after publishing the notice of intention to acquire, a date is set for an inquiry to resolve proprietary issues and claims for compensation by interested parties, followed by the inquiry itself. After inquiry, and by **Sections 113, 114** and **115**, **NLC** is required to prepare a

written award, issue a notice of the award and make payments unless there is no person competent to receive payment, the person entitled does not consent to receive the amount awarded or there is a dispute as to the right of the persons entitled to receive the compensation or as to the shares in which the compensation is to be paid. **Section 111** mandates that, in cases of compulsory acquisition, just compensation must be paid in full to all persons with established interests in the land. In **Attorney General v Zinj Limited [2021] KESC 23 (KLR),** a decision relied upon by the appellant, the apex court held: -

> ***"Any compulsory acquisition process, ought to have commenced with a requisite notice to the respondent, and any other persons claiming an interest in the land. The public purpose for which the land was to be acquired, ought to have been clearly stated. Most critically, the resultant acquisition ought to have been attended with prompt payment in full of a just compensation to the respondent."***

23. In the present case, it is undisputed that all preliminary procedural requirements stipulated under the **Land Act** were duly observed in the initial acquisition of the 5.6861 hectares of the suit property. Furthermore, in accordance with the prescribed procedure, an award of Kshs. 646,316,243/- was

rendered and duly accepted, with a payment of 10% of the awarded amount of Kshs. 64,631,624/- made. The remaining 90% of the award was outstanding, and it constituted the primary point of contention between the parties. In other words, it emerged that full and prompt payment was not made as prescribed by the law.

24. In the petition, the 1st respondent did not disclose a subsequent award of Kshs. 123,537,645/- for the revised acquired land of 2.222 hectares was made to it. However, during the hearing, it was revealed that the 1st respondent's representative (PW1) was present when this new award, dated 25 June 2021, was issued at the 2nd respondent's office, which the 1st respondent rejected.

25. To justify this new award, the appellant and 2nd respondent argued that two triggers caused it. First, the letter from EACC indicated that the parcels of land to be acquired for the project had been overvalued; that officials of the appellant and the 2nd respondent manipulated valuation reports; and that there was a fraudulent listing of project-affected persons (PAPs). This letter made several recommendations, including stopping payments and revaluation. Second, the project was varied by the appellant, resulting in a reduction in the size of the land to be acquired over the suit property. In considering these pieces of evidence, the LAT stated: -

"Furthermore, we hereby find that the 1st Respondent was under a legal duty to conduct a fresh inquiry and involve the Petitioner before a new award was issued…we find that the reasons offered by the 2nd Respondents are not sufficient and the same cannot be used to outweigh the Petitioner's interest in use of its land. Prior to the project, the Petitioner had a plan to undertake an industrial project on the property which was interfered with by the acquisition. Walking back the decision to acquire the whole portion of the 5.6861 hectares and effectively leaving a canyon in the middle violated the Petitioner's rights under Article 40 of the Constitution…we find that the 1st Respondent failed to afford the Petitioner a chance to participate in an inquiry by not conducting one after the purported revision of the plan of the project that affected the Petitioner's land significantly. In any case, the Petitioner was entitled to reasons pursuant to Article 47(2) of the Constitution for the administrative action by the 1st Respondent which affected the Petitioner's right to property."

26. These particular findings have caused grievance to the appellant and 2nd respondent. Hence, in considering the two grounds of appeal, the court will ask itself whether, if the initial acquisition process was commenced in accordance with due process and the project proponent subsequently alters the project before full compensation is paid, will the acquisition process need to be restarted? Guided by the principles of public interest in land acquisition and public finance governance as articulated in **Chapter 12** of the **Constitution,** is it appropriate to require government entities to acquire and compensate for land that they have no use for?

27. Indeed, supported by uncontested evidence, the appellant has formally assumed possession of the 2.222 hectares, as stipulated under **Section 122** of the **Land Act,** and has finalised its project on this designated area.

28. Reverting to the law, while there is a provision under **Section 123** of the **Land Act** for the withdrawal of land from acquisition, there is no provision in the **Act** or **Part V** of its **Land Regulations** for amendment, variation or alteration of the previous process on compulsory acquisition of land. Given the silence, this court must refer to our **Interpretation and General Provisions Act** to find an answer. Its interpretive provision under **Section 3** permits government entities to amend instruments, including notices, by defining the word "amend" as follows:

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‘ “amend” includes repeal, revoke, rescind, cancel, replace, add to or vary, and the doing of any two or more of those things simultaneously or in the same written law or instrument;’

29. It therefore follows that the 2nd respondent, which issued prior notices concerning the acquisition of the 5.6861 hectares, also possessed the authority to rescind those notices and to issue new notices that varied the area of land to be acquired. Essentially, and based on the evidence on record, the subsequent gazette notice no. 1919, dated 6 March 2020, by necessary implication, effectively nullified and revoked the previous gazette notices no. 9536, 11424, 11104, and 1639, and replaced them with the various withdrawals or amendments as appropriate. It is the substance and consequence of this subsequent unilateral notification, its ramifications on the 1st respondent’s award, and its impact on its constitutional rights under **Articles 40** and **47** of our **Constitution** that must be kept in mind.

30. Notwithstanding that the 2nd respondent had the authority to revoke previous notices and issue new ones that technically amended the earlier notices, whether due to project changes, public interest, or prudent use of public funds, such actions could not be taken without engaging the PAPs anew, including the 1st respondent, except in cases of withdrawal of

acquisition where payment of compensation for all damages and all reasonable costs incurred by PAPs as a result of the land acquisition proceedings is made.

31. Therefore, an opportunity to be heard preceded the amendment concerning the 1st respondent's land and any subsequent awards arising from it. In the absence of involving the 1st respondent from the outset in the process of reducing the size of the land to be acquired from the suit property and conducting a fresh inquiry, this court determines that the 2nd respondent contravened the 1st respondent's right to fair administrative action as protected under **Article 47** of the **Constitution.**

32. Furthermore, the 1st respondent having been awarded Kshs. 646,316,243/-, which it duly accepted and received payment of 10% of the awarded amount, amounting to Kshs. 64,631,624/-, it's right to a legitimate expectation regarding the remaining 90% of the award, totalling Kshs. 581,684,619/-, was established. It's right to prompt and full payment of this remaining sum, having accrued and become enforceable, then such right could not be arbitrarily negated, even under the provisions of the **Interpretation and General Provisions Act.** To do so would be prejudicial to the 1st respondent.

33. The variations could only be lawfully effectuated through the procedures provided in **Part VIII, Sections 107** to **131** of the

Land Act. Guidance on this is drawn from the persuasive decision of the **Supreme Court of India in H.C. Suman And Anr vs Rehabilitation Ministry Employees on 29 August, 1991**, which stated: -

> ***"In State of Kerala and Ors. v. K.G. Madhavan Pillai and Ors., [1988] 4 SCR p. 669, it was held by the High Court that if in pursuance of an earlier order passed by the Government some person acquires a right enforceable in law, the said right cannot be taken away by a subsequent order under general power of rescindment available to the Government under the General Clauses Act and that the said power of rescindment had to be determined in the light of the subject matter, context and the effect of the relevant provisions of the statute. The view taken by the High Court was upheld by this Court in paragraph 27 of the report. The notification dated 29th August, 1990, would, therefore, be invalid on this ground also. In view of the foregoing discussion, the civil appeal deserves to be dismissed."***

34. Significantly, the decision of the **Indian Supreme Court** in **Union of India v. Ramchandra & Ors, Civil Appeal Nos. 5006-5010, 5031 of 2022 (2022) 7 SCC 115,** which was

relied upon by the appellant regarding the severance of parcels of land during compulsory acquisition, is distinguishable from the case herein. However, in another persuasive decision by the **High Court of India** in **Ch Lokanath, Tanuku, West Godavari Dist vs Secy., Sw Dept., Hyderabad 4 Others on 12 February 2025,** which concerned changes in the land the government intended to acquire from the claimant, by seeking to acquire a new parcel of land belonging to him rather than the original one initially intended, whereby the court held that a new inquiry was necessary, a position this court agrees with held:

> ***"23. In the present case, enquiry under Section 5-A was conducted on 02.01.2009 and orders under Section 5A (2) were passed by the Collector on 30.01.2009. However, this enquiry was confined only to the acquisition of the land of the petitioner in Survey No.327/2 along with other lands belonging to third parties. When the respondents have thought to swipe and include into acquisition a new parcel of land in Survey No.327/3, instead of Survey No.327/2, the mere amendment to draft notification under Section 4(1) would not suffice to proceed further with the issuance of the draft declaration under Section 6, without conducting enquiry under Section 5-A. As enquiry under Section 5-A is held to be***

mandatory, the inclusion of new parcel of land by way of amendment to draft notification CGR, J."

35. The 2nd respondent has not yet remitted 90% of the awarded amount. So, the 2nd respondent violated the 1st respondent's right to full and prompt payment, as stipulated by **Article 40(3)(b)(i)** of the **Constitution.** Furthermore, in line with the LAT's findings, the 2nd respondent unilaterally made significant changes and modifications to the rights previously conferred upon the 1st respondent by the first award, as it varied the land to be acquired, thereby contravening the fundamental principle of *audi alteram partem*. By issuing a new award without a fresh inquiry, the 2nd respondent contravened the 1st respondent's statutory right under **Section 112** of the **Land Act,** which states that:

> ***"(1)At least thirty days after publishing the notice of intention to acquire land, the Commission shall appoint a date for an inquiry to hear issues of propriety and claims for compensation by persons interested in the land, and shall—***
>
> > ***(a)cause notice of the inquiry to be published in the Gazette or county Gazette at least fifteen days before the inquiry; and***

(b)serve a copy of the notice on every person who appears to the Commission to be interested or who claims to be interested in the land.

(2)The notice of inquiry shall call upon persons interested in the land to deliver a written claim of compensation to the Commission, not later than the date of the inquiry.

(3)At the hearing, the Commission shall—

(a)make full inquiry into and determine who are the persons interested in the land; and
(b)receive written claims of compensation from those interested in the land.

(4)The Commission may postpone an inquiry or adjourn the hearing of an inquiry from time to time for sufficient cause.

(5)For the purposes of an inquiry, the Commission shall have all the powers of the Court to summon and examine witnesses, including the persons interested in the land, to administer oaths and affirmations and to compel

the production and delivery to the Commission of documents of title to the land.

(6)The public body for whose purposes the land is being acquired, and every person interested in the land, is entitled to be heard, to produce evidence and to call and to question witnesses at an inquiry."

36. The statutory right conferred under **Section 112** of the **Land Act** is fundamental. The inquiry previously conducted was to be considered solely in relation to the land targeted for acquisition under earlier notices, which was 5.6861 hectares. Thus, any subsequent modifications were to adhere to this proviso, given that the substantive rights of the 1st respondent were involved. These rights are recognised as constitutional rights. Consequently, this court, in agreement with LAT, finds that the 2nd respondent was obligated to undertake a new inquiry as envisaged by **Section 112.**

37. Having determined that a fresh inquiry was warranted, and in accordance with the submissions of the appellant and the 2nd respondent that, in the interests of the public, including public finance, the government was under no obligation to acquire land it did not require unless, as circumstances of severance as anticipated under **Section 122** of the **Land Act** arose. In consequence, this court finds a new inquiry pursuant

to **Section 112** of the **Land Act,** read in conjunction with the **Land Value (Amendment) Act, 2019,** should have been sufficient to establish the appropriate award to be granted to the 1st respondent in respect of the 2.222 hectares. Accordingly, this Court finds that the LAT erred significantly in directing the 2nd respondent to remit Kshs. 581,684,619.00/- to the 1st respondent, representing the 90% balance of the award for compensation issued on 23rd January 2018.

38. Guided by the law, judicial precedence, reasons and findings, this court finds that the appeal is partly merited. Each party shall bear their respective costs of the appeal. Consequently, the judgment rendered by the LAT on 6 June 2024 is hereby set aside and substituted with an order in the following terms: -

a. ***That within 30 days hereof, the 2nd respondent shall issue a notice of inquiry regarding 2.222 hectares of L.R. No. 7815/8, originally no. 7815/6/1.***
b. ***That an order of certiorari be and is hereby issued, quashing the 1st respondent's award issued on 23rd January 2018 for the acquisition of 5.6861 hectares of L.R. No. 7815/8, originally no. 7815/6/1.***

c. ***An order of certiorari be and is hereby issued quashing the 1st respondent's award issued on 25th June 2021.***
d. ***That the sum of Kshs. 64,631,624/-, already paid to the 1st respondent, shall be taken into account in the subsequent new award to be made to it.***
e. ***That each party shall bear their respective costs of the appeal.***
f. ***That the costs of the Land Acquisition Tribunal proceedings shall be borne jointly by the appellant and the 2nd respondent.***

Judgment accordingly.

Delivered and Dated at Machakos this 12th day of May, 2026.

HON. A. Y. KOROSS
JUDGE
12.05.2026

Judgment delivered virtually through Microsoft Teams

Video Conferencing Platform

In the presence of;

Ms. Kanja Court Assistant

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Mr. Ochieng for Prof. Mumma Senior Counsel for appellant.

Miss Akello for 1st respondent.

Mr. Wang'ondu for 2nd respondent.

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