



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT MOMBASA**

**ELC CASE NO. 382 OF 2017**

**MESIABA JAKA ..... PLAINTIFF/RESPONDENT**

**-VERSUS-**

**NATIONAL LAND COMMISSION ..... 1<sup>ST</sup> DEFENDANT/APPLICANT**

**ATTORNEY GENERAL ..... 2<sup>ND</sup> DEFENDANT/RESPONDENT**

**RULING**

1. The 1<sup>st</sup> defendant has raised a preliminary objection on this Court's jurisdiction to hear and determine the disputed herein. In the plaint filed, the plaintiff is seeking the following reliefs:

**(i) Payment of reasonable compensation for the property acquired by compulsory acquisition.**

**(ii) Assessment of the compensation for the property acquired.**

**(iii) Interest on the same.**

**(iv) Costs**

2. The 1<sup>st</sup> defendant has entered appearance but is yet to file a defence. Instead it has filed the preliminary objection questioning the jurisdiction of the Court dated 20.2.2018. The parties presented written submissions for and against the preliminary objection.

3. To begin with, it is a misinterpretation of the law for the 1<sup>st</sup> defendant to present an argument that this Court is devoid of original jurisdiction in view of the provisions of article 162 (2) of the Constitution. The other tribunals/commissions given powers by Acts of Parliament to determine disputes such as those handled by the 1<sup>st</sup> defendant only requires parties to apply to use the alternatives provided by the statute before coming to the Environment and Land Court but it is not to say this Court is devoid of jurisdiction. See the case of **Nakuru ELC No 50 of 2013 Ken Kasinga vs Daniel Kiplagat & 5 others (2014) eKLR**.

4. Further under section 13 (2) (b) of the Environment & Land Act provides that this Court in exercise of its powers under article 162 (2) (b) has powers to hear and determine disputes relating to compulsory acquisition of land. The section does not state that the Environment & Land Court only has appellate jurisdiction over such disputes. Section 13 (4) quoted by the 1<sup>st</sup> defendant is clear that it is in addition to the powers this Court has under subsections (1) & (2), the Environment & Land Court shall exercise appellate jurisdiction. The sections of the Land Act referred to by the 1<sup>st</sup> defendant does not exclude the jurisdiction of this Court but only sets out how the 1<sup>st</sup> defendant is to conduct itself during the process of compulsory acquisition.

5. In summary, it's my decision that the preliminary objection raised is devoid of merit by virtue of the clear provisions of the respective statute. The same is thus dismissed with costs to the plaintiff.

**Dated, signed & delivered at Mombasa this 16<sup>th</sup> October 2018**

**A. OMOLLO**

**JUDGE**