Shamji Kalyan Pindoria Ltd v National Land Commission; Kenya Railways Corporation & 2 others (Interested Parties) (Miscellaneous Application E103 of 2023) [2024] KEELC 98 (KLR) (22 January 2024) (Ruling)

Neutral citation: [2024] KEELC 98 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

MISCELLANEOUS APPLICATION E103 OF 2023

JO MBOYA, J

JANUARY 22, 2024

BETWEEN

SHAMJI KALYAN PINDORIA LTD ..... APPLICANT

AND

NATIONAL LAND COMMISSION ..... RESPONDENT

AND

KENYA RAILWAYS CORPORATION ..... INTERESTED PARTY

CHINA ROAD AND BRIDGE CORPORATION ..... INTERESTED PARTY

ATTORNEY GENERAL ..... INTERESTED PARTY

RULING

Introduction and Background

1. On or about the 9th March 2018, the Respondent herein [National Land Commission] generated and issued a Letter of award dated the 9th March 2018; and in respect of which same issued various awards towards Compulsory acquisition over and in respect of L.R No's 209/12272 and 209/12273, respectively.

2. Pursuant to the two [2] letters of award, both dated the 9th March 2018, the Respondent awarded to and in favor of the Applicant the sums of Kes.50, 530, 392/= and Kes.50, 528, 649/= only, respectively.

3. Nevertheless, despite making the awards at the foot of the two [2] letters dated the 9th March 2018, the Respondent herein failed and/or neglected to pay out and/or facilitate the payments of the monies at the foot of the Letters of award. Consequently, the Applicant herein was constrained to and indeed lodged the instant suit seeking various reliefs, inter-alia, an order to compel the Respondent to pay the monetary award.

4. Suffice it to point out that on the 29th May 2023, the subject matter, namely, the Application dated the 18th April 2023; was compromised vide Consent wherein the Respondent covenanted to process and pay the monies at the foot of the Letters of award within 60 days from the date of the consent.

5. Be that as it may, the Respondent herein failed to comply with the terms of the consent order and consequently, the Applicant was constrained to and indeed filed the current Application in respect of which same has sought for the following reliefs; [verbatim]:

   i. .....Spent.

   ii. This Honorable court be pleased to make a Garnishee Order *Nisi* against the Garnishee for account No. 01001032980000 ordering that all monies deposited, lying or being held in deposit by the Garnishee to the credit of the Respondent be attached to answer a decree issued on the 18th December 2023 for the sum of Kes.101, 059, 041/=.

   iii. This Honorable court be pleased to make a Garnishee Order *Nisi* against the Garnishee for Account No. 01001032980000 ordering that all monies deposited, lying or being held in deposit by the Garnishee to the credit of the Respondent be attached to answer the decree issued on the 18th December 2023 for Kes.101, 059, 041/=.

   iv. That the Garnishee do appear before this honorable court on an appointed date and time to show cause why it should not pay the Applicant the sum of Kes.101, 059, 041/= Only, being the decretal sum as the decree issued on the 18th December 2023.

   v. That upon the Inter-partes hearing of this application, this honorable court be pleased to issue a Garnishee Order Absolute as is enough to satisfy the decretal amount of Kes.101, 059, 041/ = Only, as per the decree issued on the 18th December 2023.

   vi. That the decretal sum herein be remitted into the Applicant's Bank Account through its advocates, particulars whereof are given hereunder; Bryan Khaemba, Kamau Kamau & Co. Advocates, Equity Bank, Account No. 1290279521717, Kenyatta Avenue Branch forthwith and not latter than 24 hours from the date of the issuance of the Garnishee Order.

   vii. That the costs of this Application be borne by the Respondent.

6. The subject Application is premised and anchored on various grounds which have been enumerated at the foot thereof. Furthermore, the Application is supported by the affidavit of Jayesh Patel sworn on even date.

7. Upon being served with the instant Application, the Respondent herein filed a Replying affidavit sworn by Bryan Ikol on the 18th January 2024, wherein the Respondent inter-alia, conceded that same compulsorily acquired the properties belonging to the Applicant and further more issued letters of awards in the aggregate sum of Kes.101, 059, 041/= Only.

8. On the other hand, the Garnishee filed a Replying affidavit sworn by Christine K Makone sworn on the 18th January 2024; and in respect of which same has averred, inter-alia, that the Garnishee holds the named account on behalf of the Respondent. Additionally, the deponent also confirmed that the subject account contains sufficient funds capable of liquidating the decretal sum.

9. Moreover, the instant Application came up for hearing on the 22nd January 2024, whereupon the advocate for the respective Parties covenanted to canvass and dispose of the Application by way of oral submissions.

10. For coherence, the Application thereafter proceeded vide oral submissions in the manner proposed and agreed upon by the advocates for the respective Parties.

Parties' Submissions:

a. Applicant's Submissions:

11. The Applicant herein adopted the grounds contained at the foot of the Application and thereafter reiterated the averments contained in the affidavit of Jayesh Patel. Furthermore, Learned counsel for the Applicant thereafter raised, highlighted and amplified three [3] salient issues for consideration by the Honourable court.

12. Firstly, it was the submissions of Learned counsel for the Applicant that the Respondent herein was under Constitutional and statutory obligation to pay out and or process the payments at the foot of the compulsorily acquisition albeit and without undue delay. However, Learned counsel added that despite the obligation imposed upon the Respondent, same has failed and/or neglected to comply and as a result of such neglect, the Applicant has been subjected to grave injustice and prejudice.

13. Secondly, Learned counsel for the Applicant has submitted that the Applicant and the Respondent herein entered into and executed a consent on 29th May 2023; wherein the Respondent covenanted to process and payout the monies at the foot of the award to the Applicant. Nevertheless, Learned counsel contended that despite the clear terms of the consent, the Respondent herein has failed and neglected to liquidate the decretal sum.

14. Thirdly, Learned counsel for the Applicant has submitted that the Garnishee herein holds and operates an account on behalf of the Respondent and in respect of which there are sufficient funds capable of liquidating the decree. In any event, Learned counsel pointed out that the presence of the account and the facts that same is sufficiently funded, has been admitted and acknowledged by the Garnishee in terms of the Replying affidavit filed.

15. In view of the foregoing, Learned counsel for the Applicant has contended that the Applicant has thus tendered and placed before the Honourable court sufficient evidence to warrant the grant of the reliefs sought.

16. Consequently, Learned counsel implored the Honourable court to allow the Application beforehand.

b. Respondent's Submissions:

17. The Respondent herein adopted and reiterated the contents of the Replying affidavit sworn by Bryan Ikol on the 18th January 2024; and thereafter same highlighted two [2] pertinent issues for consideration by the court.

18. First and foremost, Learned counsel for the Respondent conceded and acknowledged that the Respondent herein compulsorily acquired the two named properties belonging to and registered in the name of the Applicant. Instructively, Learned counsel confirmed that thereafter the Respondent issued two [2] letters of award dated the 9th March 2018.

19. Nevertheless, it was the further submissions by counsel for the Respondent that despite compulsorily acquiring the suit properties, same (Respondent) has not been able to settle and/or pay the monies at the foot of the compulsorily acquisition.

20. Secondly, Learned counsel for the Respondent submitted that the reasons for the delay to liquidate and/or payout the monies at the foot of the Letters of award, was because of the 1st Interested Party,

who is the acquiring authority, had failed to release the requisite monies to the Respondent for onward transmission to the Applicant.

21. Be that as it may, Learned counsel for the Responded submitted that the 1st Interested party, namely (the acquiring authority) has since remitted to the Respondent the sum of Kes.68, 254, 800/= only, being part payment of the monies at the foot of the compulsorily acquisition.

22. Owing to the foregoing, Learned counsel for the Respondent therefore implored the court to afford the Respondent more time within which to process and to facilitate the release the monies that has since been paid out to her; and to further grant indulgence towards procuring the outstanding sums

c. Garnishee's Submissions;

23. The Garnishee herein adopted and reiterated the contents of the Replying affidavit sworn on the 18th January 2024; and thereafter highlighted and canvassed two [2] salient issues for consideration by the court.

24. Firstly, Learned counsel for the Garnishee has submitted that indeed the Garnishee holds the designated/named account on behalf of the Respondent herein. Furthermore, learned counsel for the Garnishee also contended that the designated account is sufficiently funded.

25. Secondly, Learned counsel for the Garnishee has submitted that even though the designated account is sufficiently funded, the monies therein are held in trust for various designated recipient(s) of compensation and thus the said monies are not available for attachment either in the manner sought or at all.

26. Additionally, Learned counsel ventured forward and submitted that the Respondent herein is a governmental body and thus execution vide Garnishee proceedings, like the one beforehand, cannot be commenced and sustained against the Respondent.

27 In support of the foregoing submissions, learned counsel for the Garnishee has cited and relied on, *inter-alia*, the holding in the case of Okiya Omutata v The Attorney General & 7 Others (2013)eKLR; and Prof Tom Ojienda & Associates v National Land Commission & National Bank of Kenya (2019)eKLR, respectively.

Issues For Determination:

28. Having reviewed the subject Application and the Responses thereto; and upon consideration of the submissions rendered on behalf of the advocates for the respective Parties, the following issues do emerge and are thus worthy of determination;

    i. Whether the Applicant has established and demonstrated that the Garnishee holds an account on behalf of the Respondent; and if so, whether the account is sufficiently funded.

    ii. Whether the Garnishee has established that the funds held by same are (sic) statutorily insulated from attachment or otherwise.

    iii. What reliefs ought to be granted.

Analysis And Determination:

Issue Number 1. Whether The Applicant Has Established And Demonstrated That The Garnishee Holds An Account On Behalf Of The Respondent; And If So, Whether The Account Is Sufficiently Funded.

29. The Applicant herein filed and/or commenced the instant application seeking to procure and obtain an order to attach the monies obtaining in the designated account, whose details are duly enumerated and alluded to at the foot of the application.

30. Pursuant to the application under reference, the court proceeded to and indeed granted the Order *Nisi* which was thereafter served upon the Garnishee. For coherence, the Order *Nisi* directed the Garnishee to freeze the monies held in the designated account.

31. Be that as it may, the Garnishee herein subsequently filed a Replying affidavit sworn on the 18th January 2024 and in respect of which same averred inter-alia;

> " 4 That I wish to inform this honorable court that the Respondent does indeed hold account number 01001032980000 resident at the Garnishee bank and the same is sufficiently funded".

32. From the foregoing deposition, two things become evident and apparent. Firstly, there is an admission and acknowledgment that indeed the Garnishee holds a bank account on behalf of the Respondent herein.

33. Secondly, it is also evident that the designated account, which is held for and on behalf of the Respondent, is sufficiently funded and thus capable of liquidating the decretal sum at the foot of the instant proceedings.

34. Premised on the averment that the Garnishee holds an account for and on behalf of the Respondent and coupled with the fact that the impugned account is sufficiently funded, the Applicant herein is deemed to have discharged the burden placed on her by the law, by dint of the Provisions of Sections 107, 108 and 109 of the *Evidence Act*, Chapter 80, Laws of Kenya.

35. To this end, it is also important to take cognizance of the holding in the case of James G.K Njoroge T/a Baraka Tools & Hardware versus APA Insurance Company Ltd (2018)eKLR, where the Court of Appeal stated as hereunder;

> (29) As regards the Garnishee order, the provisions of Order XX11 Rule 1(1) reproduced above, shows that the order is for an attachment of a debt. Therefore, for the court to issue a garnishee order, the appellant had to satisfy the court that the 1st respondent was holding money belonging to or due to the judgment-debtor which monies should be attached to meet the decree or part of the decree that had been issued in favour of the appellant. The Bond relied on by the appellant, merely demonstrated that the 1st respondent had guaranteed payment of the decretal sum during the pendency of the application for stay of execution only. That guarantee did not amount to a debt that could be attached. The 1st respondent having specifically denied being indebted to the 2nd respondent, and there being no evidence to contradict the 1st respondent's denial, there was no basis upon which the court could issue a garnishee order. As was stated in Petro Sonko & another v H. A. D. B. Patel & another 20 EACA 99, the onus is on the Judgment Creditor to establish that there is a debt due and recoverable from the Garnishee to the Judgment Debtor.

36. In view of the foregoing, my answer to issue number One [1] is to the effect that the Applicant herein has established and demonstrated that the Garnishee holds money on behalf of the Respondent. Furthermore, with this proof, the burden shifts to the Garnishee to place before the Honorable court cogent, plausible and strong evidence, to bar the issuance of the order Absolute.

37. Instructively, the legal position pertaining to the shift of the burden of proof was highlighted and amplified by the Court of Appeal in the case of Otieno Ragot & Co Advocates versus City Council of Nairobi [2015] eKLR, where the court held thus;

> " Garnishee proceedings are in their very nature proceedings whereby the Garnishee is required to prove whether or not the garnishee is indebted to the judgment-debtor. Ordinarily, the judgment-creditor only makes allegations of the Garnishee's indebtedness based on sound evidence whereby the burden of proof shifts to the Garnishee to prove otherwise. In this regard, to discharge that burden, the Garnishee has to produce strong, sufficient and convincing evidence that the funds in its hands or the debt is not due or payable."

38. With the foregoing position, it is now appropriate to venture forward and discuss issue number two [2], with a view to ascertaining whether or not the Garnishee has discharged the burden placed on her, to negate the grant of the orders sought.

Issue Number 2. Whether The Garnishee Has Established That The Funds Held By Same Are (sic) Statutorily Insulated From Attachment Or Otherwise.

39. Despite admitting and acknowledging that same (Garnishee) holds the designated account for and on behalf of the Respondent herein, the the Garnishee proceeded to and contended as hereunder;

> " Paragraph 5 of the replying affidavit
>
> That I am aware by virtue of my engagement with the judgment debtor that the funds are held in trust for various designated recipients for compensation and hence same is not available for satisfaction of any decree as funds due to the general use of the judgment debtor".

40. In my humble view, the Garnishee herein seems to suggest that the monies held in the designated account are insulated from execution and/or better still, privileged and hence not available for attachment.

41. Furthermore, it is evident from the averment that the insulation stems from the fact that the monies in the designated account are held [sic] on behalf of various recipients of compensation.

42. Nevertheless, it is not lost on this Honourable court that the Applicant herein has contended that and indeed same has been admitted, that same (Applicant) was entitled to compensation on account of compulsorily acquisition of her lands.

43. Consequently and in the premises, to the extent that the Garnishee acknowledges and admits that the funds held in the designated accounts are meant for payment of compensation awards, then the said funds become available to settle, inter-alia, the decree in favor of the Applicant herein, which is essentially founded on Compensation on account of Compulsory acquisition.

44. Simply put, the monies in question are thus monies that are meant for the purposes of liquidating and/or settling the claims like the one mounted by the Applicant. Consequently and in this regard, the

contention by the Garnishee that the said monies are insulated and thus not available for attachment is misconceived and otherwise constitutes a red-herring.

45. Secondly, Learned counsel for the Garnishee contended that the Respondent herein, which is an Independent Constitutional Commission [by dint of her creation], is part of the National Government and thus no execution vide Garnishee proceedings can be commenced and/or maintained against the Respondent and her accounts.

46. To buttress the foregoing submissions, Learned counsel for the Garnishee cited the provisions of Section 21(4) of the *Government Proceedings Act*, Chapter 40 Laws of Kenya and thereafter invited the Honourable court to find and hold that the Respondent is insulated pursuant to the named section.

47. Similarly, Learned counsel for the Garnishee also invited the Honourable court to take cognizance of the holding in the case of Okiya Omutata v the AG & 7 Others (2013)eKLR; and Prof Tom Ojienda & Associates v National Land Commission & National Bank (2019)eKLR, respectively.

48. Be that as it may, my short answer to the twin issues raised and amplified by Learned counsel for the Garnishee are as hereunder;

49. To start with, the provisions of Section 21 of the *Government Proceedings Act*, Chapter 40 Laws of Kenya, hitherto referred to the Central Government, prior to and before the promulgation of *the Constitution* 2010. In this regard, the clear text of the said provisions operated to insulate the Government from execution and attachment in the ordinary manner of proceedings.

50. For clarity, execution against the Government could only be commenced vide Judicial review proceedings in the nature of mandamus, albeit directed against the Accounting officer of the designated Government Department.

51. First forward, it is common knowledge that the provisions of Section 21 of the *Government Proceedings Act*, Chapter 40 Laws of Kenya, were subsequently amended ex-post the promulgation of *the Constitution* 2010 and Parliament [National Assembly & Senate] only added Section 21(4) thereof, which essentially brought on board the County Governments.

52. To my mind, Parliament [National Assembly and the Senate] had the requisite opportunity to include the independent constitutional commission, within the purview of Section 21 of the *Government Proceedings Act*, if, it was deemed desirable so to do. However, that did not happen and hence it does not fall within the ambits of the courts of law to read into the Act, (sic) that which Parliament [National Assembly and Senate], did not deem appropriate.

53. In a nutshell, it is my humble position that the provisions of Section 21(4) of the *Government Proceedings Act*, Chapter 40 Laws of Kenya which was highlighted and relied upon by Learned counsel for the Garnishee does not hold sway or otherwise.

54. In this respect, I share and endorse the sentiments of the court in the case of Tom Ojienda & Associates versus National Land Commission; National Bank of Kenya & Another (Garnishee) (Misc. Application No. 29B of 2016) (2022) KEHC 11463 (KLR), where the court had occasion to consider whether National Land Commission is shielded from Execution proceedings or otherwise and wherein the court stated thus;

> "I take the view that, in as much as the Respondent is independent and clothed with the requisite constitutional power to sue and to be sued in its corporate name, it is not the government or a government department for purposes of *Government Proceedings Act*. Indeed, it was in recognition of this independent that it engaged the services of

the Applicant herein to offer legal representation. Consequently, my considered view is that the Respondent is amenable to the usual legal consequences flowing from such processes, including execution of ensuing decrees. This is because there is no such protection afforded by its organic legislation, namely, the *National Land Commission Act*, to shield the Respondent from the execution process.

Moreover, it is telling that whereas the *Government Proceedings Act* was amended by the Government Proceedings (Amendment Act), 2015; to include County Governments, Parliament, in its wisdom did not consider it apposite to extend the same shield to independent commission such as the Respondent"

55. Furthermore, I have had an occasion to consider the same scenario in a previous decision, namely, Njeru Nyaga & Co Advocates LLP V Registered Trustees Of Ruiru Sports Club; National Land Commission (Garnishee) (Miscellaneous Application E083 Of 2023) [2023], where this court held as hereunder;

> 59. Other than the contention by the Garnishee, which has been addressed in terms of the preceding paragraphs; there is yet another contention that has been raised by the Respondent herein, namely, that the monies held by the Garnishee, are not attachable in satisfaction of the Judgment debt, insofar as the Garnishee herein is insulated by the provisions of the *Government Proceedings Act*.
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> 60. Ostensibly, what the Respondent herein is contending is to the effect that the Garnishee falls within the description of the Government and thus the Garnishee proceedings cannot issue for purposes of attaching monies held by the Garnishee herein.
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> 61. Despite the contention by and on behalf of the Respondent herein, it is my humble view that the Garnishee herein does not fall within the purview of the Provisions of Section 21(4) of the *Government Proceedings Act*, Chapter 40 Laws of Kenya; either as alleged or at all.
>
> 62. Furthermore, it is imperative to underscore that the Section 21(4) of the *Government Proceedings Act*, Chapter 40 Laws of Kenya, were amended in the year 2015, but the National assembly and the Senate, respectively, did not deem it fit or appropriate to include Independent and Constitutional Commissions, inter-alia, the Garnishee herein, as part of the bodies insulated from attachment.

56. Other than the foregoing, the contention that National Land Commission, which is an independent constitutional commission, is part of the National Government, is also misleading and founded on quicksand.

57. Firstly, it is elementary learning that the Government is comprised of three arms, namely, the National Executive, the Legislature and the Judiciary. For good measure, the position herein is underpinned by the provisions of Article 1(3) of *the Constitution* of Kenya 2010.

58. Additionally, it is also worth stating that the composition of the National Executive, which is one arm of the Government is espoused and entrenched in Article 130 of *the Constitution* of Kenya, whose terms are explicit and crystal clear. Instructively, the National executive, does not include any independent constitutional commission.

59. Moreover, there is no gainsaying that the independent constitutional commissions, just as the names suggests, are "Independent" and thus same are not subordinate to and/or appendages of the National Government/Executive, to warrant same being lumped together as National Government, in the manner contended by Learned counsel for the Garnishee.

60. First forward, it is also worth recalling that the provisions of Article 249 of *the Constitution*, 2010, denotes that such commissions, like the Respondent herein are Independent. Consequently, the question that does arise is, independent from what and whom?

61. In my humble view, the independence that was accorded to and/or conferred upon the constitutional commissions, [by dint of *the Constitution*, 2010], was to insulate same from the National Executive/ Government, which had hitherto been domineering and thus the need for the independence.

62. Before departing from this discourse, it is imperative to reproduce the provisions of Article 249 of *the Constitution*, 2010.

63. For brevity, same are reproduced as hereunder;

> 249.
>
> (1) The objects of the commissions and the independent offices are to—
>
> (a) protect the sovereignty of the people;
>
> (b) secure the observance by all State organs of democratic values and principles; and
>
> (c) promote constitutionalism.
>
> (2) The commissions and the holders of independent offices—
>
> (a) are subject only to this Constitution and the law; and
>
> (b) are independent and not subject to direction or control by any person or authority.
>
> (3) Parliament shall allocate adequate funds to enable each commission and independent office to perform its functions and the budget of each commission and independent office shall be a separate vote.

64. To my mind, if the arguments espoused by Learned counsel for the Garnishee were to hold sway, namely, that the independent constitutional commissions are part of the National Government, then the import and tenor of Article 249(2) of *the Constitution* 2010, would be rendered redundant and otiose.

65. Without belaboring the point, my answer to issue number two is two-fold. Firstly, the funds if at all, belonging to the Respondent and held by the Garnishee, are not insulated by dint of Section 21(4) of *the Constitution* 2010.

66. Secondly, that the Respondent herein, by virtue of being an independent constitutional commission, is not part of the National Executive. In this regard, Article 130 of *the Constitution* 2010 is instructive, succinct and apt.

Issue Number 3: What Reliefs Ought To Be Granted.

67. It is common ground that the Respondent herein proceeded to and exercised her constitutional mandate to compulsorily acquire the named properties belonging to and registered in the name of the Applicant. For coherence, the acquisition of the named properties is not in contest.

68. Nevertheless, upon the compulsory acquisition, the Respondent herein was obliged and/or obligated to facilitate prompt and timeous payments of the compensation money to and in favor of the

proprietor of the designated properties. Furthermore, it is a constitutional imperative that such payments must be made in lumpsum. See Article 40(3) of *the Constitution* 2010.

69. Notwithstanding the explicit provisions of Article 40(3) of *the Constitution*, 2010, the Respondent herein, has been playing a cat and mouse game [Lottery], with the Applicant and thus the compensation has been withheld and essentially delayed for a duration for more than six (6) years.

70. Quiet clearly, the conduct of the Respondent herein does not meet and/or satisfy the national values and principles of governance as entrenched vide Article 10 of *the Constitution* 2010. Consequently, any delay in granting orders to facilitate the effective and effectual payment of the compensation award, would be tantamount to countenancing the infringement of the fundamental freedoms and constitutional rights of the Applicant.

71. Finally, the need and necessity to pay the compensation award promptly, timeously and in lumpsum, as articulated in Article 40(3) of *the Constitution* 2010, was highlighted and elaborated upon by a Five-Judge bench of the High Court in the case of Patrick Musimba v National Land Commission (2015)eKLR, where the court stated and held thus;

    118. As was stated by Scott L.J, in relation to compulsory acquisition, in the case of Horn-v-Sunderland Corporation [1941] 2 KB 26,40:

        > "The word "compensation" almost of itself carries the corollary that the loss to the seller must be completely made up to him, on the ground that unless he receives a price that fully equaled his pecuniary detriment, the compensation would not be equivalent to the compulsory sacrifice".

    119. Effectively Lord Scott's statement gave rise to the unabated proposition that the compensation of compulsorily acquired property be quantified in accordance with the principle of equivalence. A person is entitled to compensation for losses fairly attributed to the taking of his land but not to any greater amount as "fair compensation requires that he should be paid for the value of the land to him, not its value generally or its value to the acquiring authority": see Director of Buildings and Lands –v- Shun Fung Wouworks Ltd [1995] AC 111,125.

    120. We see no reason why the same approach should not be adopted locally. *The Constitution* decrees "just compensation" which must be paid promptly and in full. *The Constitution* dictates that the compensation be equitable and lawful when the word "just" is applied as according to Black's Law Dictionary 9th Ed page 881 the word "just" means "legally right; lawful; equitable". In our view, the only equitable compensation for compulsory acquisition of land should be one which equates restitution. Once the property is acquired and there is direct loss by reason of the acquisition the owner is entitled to be paid the equivalent. One must receive a price equal to his pecuniary detriment; he is not to receive less or more. This can be achieved to the satisfaction of the owner of land by reference to the market value of the land.

72. To surmise, the Applicant herein, has tendered and placed before the Honourable court sufficient evidence to warrant the grant of the orders sought. In any event, a further delay in the processing and payment of the compensation sum would defeat the letter and spirit of *the Constitution* and thus amount to abrogation of Article 259 of *the Constitution*, 2010.

Final Disposition:

73. Having analyzed and considered the thematic issues, which were highlighted herein before, [in the body of the Ruling], it must have become crystal clear that the application beforehand is meritorious and thus worthy of being granted.

74. Consequently and in the premises, I therefore proceed to and do hereby allow the Application dated the 19th December 2023; on the following terms;

    i. An Order of Garnishee Absolute be and is hereby issued against the Garnishee over and in respect of account No. 01001032980000 ordering that all monies deposited, lying or being held in deposit by the Garnishee to the credit of the Respondent be and is hereby attached to answer the decree issued on the 18th December 2023 for the sum of Kes.101, 059, 041/= only.

    ii. The decretal sum herein be remitted into the Applicant's Bank Account through its advocates, particulars whereof are given hereunder; Bryan Khaemba, Kamau Kamau & Co. Advocates, Equity Bank, Account No. 1290279521717, Kenyatta Avenue Branch forthwith and not latter than 7 days from the date hereof.

    iii. Costs of the Application shall be borne by the Respondent. In any event, such costs are hereby assessed and certified in the sum of Kes.50, 000/= only.

    iv. Similarly, the Respondent shall bear the costs of the Garnishee and same are assessed and certified in the sum of Kes.50, 000/= only.

75. It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 22ND DAY OF JANUARY 2024.

OGUTTU MBOYA,

JUDGE.

In the Presence of:

Mr. Bryan Khaemba for the Applicant.

Ms. Wanini for the Respondent.

Mr. Stamili Samili for the 1st Interested Party.

Mr. Mugisha for the Garnishee.