REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

E.L.C CASE NO. 54 OF 2015

GAMI PROPERTIES LIMITED APPELLANT

VS

NATIONAL LAND COMMISSION RESPONDENT

JUDGEMENT

1. The Appellant is the registered proprietor of all that piece of land known as L.R No. 337/4797 (IR No. 138014) situate along Mombasa Road at Devki Junction at Mavoko Municipality, (as it was then) in Machakos County and measuring 2.990 hectares or 7.388 acres. The land tenure is a leasehold for a term of 99 years with effect from the 1st September 1991. The land is triangular in shape and enjoys a road frontage along Mombasa Road and is approx. 2 kilometers from Athi River Central Business District.

2. The Respondent is the National Land Commission (hereinafter referred as the NLC), an independent Commission established under Article 67 (1) of the Constitution and is operationalized under the National Land Commission Act No. 5 of 2012 and charged with the constitutional mandate to *interalia*, manage public land on behalf of the National and County governments. Under Part VIII of the Land Act, No. 6 of 2012, the commission has authority to carry out compulsory acquisition of private land required for public purposes and for a public institution in accordance with the provisions of Article 40(3) of the Constitution.

3. Vide a Kenya Gazette No. 7090 of the 10th October 2014 the respondent notified the public and the affected land owners that the Government intends to acquire the underlisted parcels of land for the Kenya Railways Corporation (KRC) for the construction of the Standard Gauge Railway in Machakos and Nairobi Counties. In addition, it stated further that plans for the affected land may be inspected during office hours at their offices. A portion of L.R NO. 337/4797 measuring 1.0298 Ha or 2.5446 acres belonging to the Appellant was among the land listed and intended for acquisition in the aforestated notice.

4. Pursuant to No 3 above the respondent issued an award in the sum of Kshs. 86,928,500/- as a fair compensation to the Appellant for the plot on the 16th June 2015.

5. Aggrieved by the above award, the Appellant filed this appeal seeking orders that the award of Kshs 86,928,500/- be varied and/or enhanced to a sum of Kshs. 647,000,000/- or as the Court may deem fit. In addition, it sought for costs of the appeal.

The Appellants' Case

6. The appellant filed a memorandum of appeal and affidavit in support of the appeal sworn by its

Director Bharat Ramji Manji on the 15th July 2015. The appeal is supported by various documents marked BRM1-14 on pages 11-99 of the said Memorandum of Appeal.

7. In summary, the appellant's case is as set out hereunder; that the appellant was in the process of constructing an ultra modern shopping mall complex comprising a supermarket, shops, food court, movie theatre and parking facilities on its property LR No 337/4797. In preparation for the construction, the appellant avers that it caused the building plans and bills of quantities to be drawn by the firms of Simiyu B Nakitare and Tana & Associates respectively. It also states that it obtained building plan approvals from the Municipal Council of Mavoko and engaged the Kenya Power and Lighting Company Limited to divert and relocate the power lines from the property. That it built a boundary wall on the perimeter of the land and put up a batching plant to provide concrete for the project. The appellant further states that it had carried out extensive excavation works on the land.

8. It is the appellant's case that the acquisition of 2.5446 acres or 1.0298 Ha of its land will reduce the size of its project by removing the parking area that was intended to service the shopping mall, with the result that the parking for the shopping mall will have to be relocated to the basement. Because of the said acquisition, the appellant contents that its project will be affected in the following manner; redrawing of the original designs to include two levels basement parking, increase of costs of construction of the basement parking, costs of demolition and relocation of the boundary wall and batching plant, costs of the redesign of the proposed shopping mall and that the SGR project will undermine the project during the construction phase and further impede quiet use and enjoyment of the property after construction.

9. The grounds of appeal advanced by the appellant are as set out below;

> 9.1 That the respondent applied an arbitrary and unknown compensation assessment in violation of the principles of the just compensation under Article 40(3) of the constitution.
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> 9.2 That the respondent failed to consider the weight of the representations of the appellant submitted to the respondent way before it prepared and issued the impugned award.
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> 9.3 The respondent in its assessment failed or ignored to make reasonable allowance predicated on the principles of placing the dispossessed appellant in the same or similar position prior to the acquisition of the land. That it failed to take into account the reasonable allowance for loss attributable to severance/compulsory acquisition of the portion of 1.098 ha; damage sustained or likely to be sustained by reason of severance of the land; that acquisition injuriously affected the actual earnings of the Appellant by downsizing the scale of the approved project; development costs incurred by the appellant such as building plan approval, diversion of power line, professional fees for the architectural drawings, bills of quantities and environmental impact assessment from NEMA; damage resulting from diminution of profits of the land between the publication of the notice and the date of taking possession by the respondent; investment nature of the land as a shopping mall and investment relocation costs of constructing basement parking.
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> 9.4 That the respondent failed to consider reasonable allowance for costs attributable to disturbance which had already been incurred as a result of acquisition necessary to return the Appellant to an equivalent position prior to the acquisition. Such are ;- costs associated with the reestablishing the boundary wall, reestablishing the power lines to the remaining portion of the land, relocation of the batching plant, excavation works for the new parking and redesigning the intended development to include two storey parking for the shopping mall.
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> 9. 5 That the respondent failed to take into account the costs borne by the appellant in redesigning the project all valued at Kshs. 516,000,000/-

10. The appellant contends that the amount due to the appellant as compensation is in the sum of Kshs. 647,000,000/- made up of i). Kshs 63,473,270/- being costs incurred in the project for approvals, power diversion, batching plant and erecting new boundary wall. ii). Kshs 131,000,000/- being the current market rates for the 1.098 ha and iii). Kshs. 432,798,343/- being the projected costs of rescaling the

project.

11. In its submissions, the appellant states that it learnt through the Gazette Notice No 7090 of 10th October 2014 that a portion of its land was to be compulsorily acquired for the expansion of the Mombasa-Nairobi SGR Project. In response, the appellant through its advocates submitted its written submissions on the 30th March 2015 to the Respondent for compensation in the sum of Kshs 647,000,000/- together with the necessary documentation in support of its claim. It states further that on receipt, the respondent did not call for any further information or clarification from the appellant. Thereafter the appellant avers that it received an award from the respondent dated the 16th June 2015 informing it that it had concluded the inquiry into the acquisition of the land and awarded the sum of Kshs. 86,928,500/-

12. That the appellant being dissatisfied by the award, objected on the grounds that the sum was a gross undervaluation of the property and through letters dated 18th June 2015 and 30th June 2015 to the respondent sought a detailed valuation report indicating the factors that the respondent took into account in arriving at the compensation award. The respondent did not offer any response to the appellants requested information prompting the appellant to file this appeal.

13. It is the appellants case that the respondent is under a constitutional obligation to give the dispossessed owner an opportunity to attend and or give written representations which it ought to take into account in reaching an award. That Article 47(1) and 47(2) guarantees the right to administrative action that is procedurally fair and if a right or an administrative action is likely to be adversely affected by the administrative action, the person has a right to be given reasons for the action. The appellant contends that it had a right to be afforded the reasons or sufficient date or analysis of the factors that resulted in the award given by the respondent. The appellant submits that it is aggrieved because its written representations furnished and acknowledged by the respondent were not considered in arriving at the award. That in so doing the respondent made a determination on compensation in disregard to the principles of fair administrative actions as contemplated under Art 47 of the constitution.

14. The appellant states that it did not attend the inquiry held by the respondent because it did not have adequate notice of the said inquiry. That no notice was served on the Appellant by the Respondent and the respondent cannot justify this by holding that the gazette notice amounted to prior and sufficient notice to the appellant given the gravity of the matter at hand. It submits that the respondent ought to have exercised fairness in notifying the appellant of the date and place of inquiry. Citing the cases of **Sceneries Limited Vs National Land Commission (2017) eKLR; Onyango Vs Attorney General; Commissioner of Lands & Another Vs Coastal Aquaculture Limited CA 252/96,** the appellant implored the court to hold that prior notice was not given, the consequence of which its right to natural justice and fair administrative action were impeded by the respondent in arriving at the award as given. It further contended that failure by the respondent to provide the appellant with the opportunity to be heard or its written representations considered created a rebuttable presumption of a substantial error or defect in the procedure adopted by the respondent in assessing the amount of compensation due to the appellant.

15. It further submitted that the respondent applied a principle of compensation assessment that was in violation of the principles of full and just compensation under Article 40 of the constitution. That fair value of compensation encompasses the market value plus 15% statutory allowance as well as special value where the owner has demonstrated the financial value of any economic injury done related to the land. That the award of compensation was fundamentally flawed as it disregarded the valuation report given to it by the appellant that captured the economic loss that the appellant would suffer as a result of it foregoing a portion of its land that was planned for development.

16. In addition, the appellant contends that the award failed to include the special value factor i.e. injury occasioned on the appellant by reason of the acquisition of the land by the respondent. That the respondent failed to use the data provided by the appellant in its written representations to ensure that the appraised value is the closest estimate of compensation to put the dispossessed appellant into the same position had its property not been compulsorily acquired.

The Respondents Case

17. The Respondents response is contained in the Replying affidavit sworn by Fidelis Kamwana Mburu, its Chief Valuation officer and filed in court on the 24th March 2017 and the annexed valuation report dated the 10th June 2015.

18. The respondent avers that following the gazettement of the notice on intention to compulsory acquire the land, it carried out site inspections and held an inquiry in accordance with Section 113 of the Land Act, 2012. That the appellant did not appear nor was it represented at the said inquiry. That subsequent to the inquiry it issued an award in the sum of Kshs, 86,928,500/- as just compensation of the value of the property compulsorily acquired. That the award is based on the Land Act 2012 and the principles of determining just compensation as set out in the Land Acquisition Act Cap 295(now repealed).

19. The respondent stated that the award did not take into account the written representation furnished to the respondents as the appellant failed to submit it on or at the date of the inquiry. Further in objecting to the appellants claim of having constructed parking bays for the shopping mall, the respondent states that no parking bays had been constructed as supported by the appellants valuation report which indicated the portion of the land to be acquired as being vacant.

20. The Respondent took issue with the appellant's valuation report and avers that the same cannot be relied on for purposes of compensation as the same was ostensibly prepared for sale purposes and for that reason there is a likelihood that it took into account a bargaining room and considered a seller's perspective which is on the higher side. That on that account the methodology ceases to deliver market value. Further that the appellants valuation of Kshs 380,000,000/- is unsupported by any sales comparable and hence the figure is arbitrary.

21. The respondent further discounted the notion that all costs borne by the property owner around the time of acquisition can be reimbursed. That its mandate is to return a fair compensation and at the very minimum satisfy the principle of indemnity. In specific, the Respondent challenged the appellants valuation on the grounds interalia that; the portion acquired did not suffer from severance; land was vacant in any case and no evidence of earnings/profits or approved plans were submitted; costs of relocating power is ordinarily met by the contractor and in this case the appellant initiated the power relocation in 2013 before the acquisition process commenced hence it cannot be a cost resultant from or payable under the acquisition; no proof of costs of constructing the basement parking and hence not payable.

22. In its submissions, the respondent states it published two notices in the Kenya Gazette; No 7090 of the 10th October 2014 publishing its notice of intention to acquire a portion of L. R No. 337/4797 and the second notice was No. 1180 dated the 20th February 2015 inviting all the interested parties for inquiries as to the compensation of the affected lands on the 10th March 2015 at Athi River Chiefs Office at 9 00 a.m. It avers that the appellant did not appear nor was it represented nor submitted any written representations as per the requirement of the said notice.

23. It urged the Court to rely on the case of **Patrick Musimba Vs National Land Commission & 4 others (2016) Eklr,** which case summarized the process of compulsory acquisition.

24. As to what the appropriate user of the property was at the time of acquisition, the respondent submitted that the property was industrial and there is no evidence of change of user that was tabled by the appellant leaving the alleged approvals for construction of a shopping mall suspect.

25. The respondent whilst admitting that it did not take into account the written representations of the appellant gave the reason that they were submitted on the 30th March 2015 way after the date of the inquiry on the 10th March 2015 contrary to section 112 (2) of the Land Act. That having held the inquiry on the 10th March 2015, the respondent was mandated by Section 113(1) and (2) to prepare a written award, noting that no written claims of compensation had been submitted on or before the date of the

inquiry by the appellant. That admitting the appellant's written claim after the 10th March 2015 would have been tantamount to holding a further inquiry without gazettement.

26. In respect to the award of Kes. 86,928,500/- the respondent states that it applied the principles of just compensation as provided for in Para 2 of the Schedule in the Land Acquisition Act (now repealed) and as held in the case of **Five Star Agencies Limited Vs National Land Commission ELC NO 445 of 2014.** That the appellants valuation of Kshs 380,000,000/- is not supported by any comparable sales and hence it is arbitrary and unfounded. That the appellant has not proved any claims under severance nor injurious affection.

27. The respondent challenged the sum of Kshs 63,473,270/- claimed by the appellant as costs incurred on the grounds that the property was vacant at the time of gazettement notice. The costs of relocating the batching plant which was non-existent are therefore discounted by the respondent.

Issue, analysis and determination

28. The two issues for determination are; i) Whether the Appellant was given notice and opportunity to present its written representations and by extension whether it was given the opportunity to be heard by the Respondent ii). Whether the compensation was sufficient.

29.Whether the Appellant was given opportunity to present its representations and by extension whether it was given the opportunity to be heard by the Respondent It is on record that the respondent published the Gazette Notice No 1070 on 10th October 2014 giving notice to the public and the land owners of the intended acquisition of interalia the Appellant's land L.R No. 337/4797. The notice is dated the 8th October 2014. The notice further informed those affected that the plans for the affected land may be inspected during office hours at its offices at Ardhi House as well as the Lands offices in Machakos and Nairobi Counties.

30. It is also on record as admitted by the respondent in its submissions that the respondent in furtherance of the above notice published a second gazette notice No.1180 of 20th February 2015 inviting all interested parties for hearing of inquiries as to compensation on the 10th March 2015 at Athi River Chief's Office at 9 am. Albeit this, the copy of the gazette notice was not presented to the Court.

31. It is the appellant's case that it was not given prior notice of the notice of intention to compulsorily acquire nor the notice for hearing of the inquiry into compensation of the intended property nor sufficient information to prepare for its case. That it was not provided with the opportunity to be heard at the inquiry and neither its written representations were taken into account in arriving at the award by the respondent. That this failure is contrary to its rights of fair administrative action and the principles of natural justice and shows that the decision reached by the respondent is flawed and ought to be disregarded by the Court.

32. It would appear from the record that the appellant in its letter to the respondent dated 30th March 2015 was not aware of the Gazette Notice No 1180 for the hearing of the inquiry that was scheduled for the 20th February 2015. The appellant seems to be responding to the gazette notice No 1070 of the 10th October 2015 in respect to the notice to compulsorily acquisition. The letter carried representations in anticipation of an inquiry to be held by the respondent which inquiry had apparently been held 10 days before without the appellant being notified of the same. In its submissions, the appellant has stated that it did not attend the inquiry held by the respondent on the 20th February 2015 because it did not have adequate notice of the same.

33. In response, the respondent contends that the appellant had sufficient notice of the two Gazette notices and that service of the notice of inquiry was effected on the appellant. The respondent however has not presented any evidence of service to the court to proof this assertion. Further that the written representations filed by the appellant with the respondent on the 30th March 2015 were not taken into consideration as at the time of the issuance of the award of compensation that was issued on the 16th June

2015. The reasons proffered by the respondent is that the respondent having held inquiries on the 20th March 2015, it was bound by section 113 of the Land Act to issue an award of compensation irrespective of the material placed before it as at the time of inquiry. That no further documents could be taken into consideration save only the written claims of compensation as submitted on or before the date of the inquiry. That section 112 (2) of the Land Act required the appellant to deliver a written claim of compensation to the respondent not later than the date of the enquiry and not after. That were the respondent to take into consideration the written claim of compensation as submitted by the appellant on the 30th March 2015, it would amount to holding a further inquiry without gazettement.

34. Did the respondent condemn the appellant unheard in holding the inquiry in the absence of notifying the respondent? The principles of natural justice were affirmed in the case of **Local Government Board Vs Arlidge** where the court held that

> "…those whose duty it is to decide must act judicially. They must deal with the question referred to them without bias and they must give to each of the parties the opportunity of adequately presenting the case made. The decision must come to the spirit and with the sense of responsibility of the tribunal whose duty it is to meet out justice".

35. In the case of **Sceneries Limited Vs National Land Commission (2017) EKLR**, the court held that …. Failure to give proper notice is in itself a denial of natural justice and fairness…'. In the present case the respondent contends that the gazette notice is adequate notice to the appellant. I disagree with the respondent in respect of the mode of service. It neither qualifies as adequate notice under the Land Act and does not comply with the principles of natural justice.

36. In addition, the Court holds the conduct of the respondent in not taking into account the written representations of the claim by the appellant submitted on the 30th March 2015 contrary to the principles of natural justice. The respondent has not given any prejudice that it would have suffered if indeed it considered the written representations in its possession, even before it embarked on its own valuation dated the 10th June 2015. The award was given on the 16th June 2015 while the written representations were received on the 30th March 2015, a clear two and half months before its decision was made.

37. Article 47(1) and (2) of the Constitution provides as follows;-

> "a) Every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.
>
> b) If a right or fundamental freedom of a person has been or is likely to be adversely affected by administrative action, the person has the right to be given written reasons for the action."

38. The appellant submitted that on receipt of the award dated the 16th June 2015, it wrote to the respondent on the 18th June 2015 and seeking the reasons/data and analysis of the factors that it took into account to substantiate the award including the valuation report. It is on record that the respondent ignored or refused to furnish the information requested. In this case the right of the appellant to property is being adversely affected by the administrative action (compulsory acquisition) and the appellant has a right to be given written reasons for the action. I see no reason why the respondent elected to ignore a fundamental right to the appellant that is enshrined in Article 47(2) of the constitution.

39. In the end, I find that the procedure adopted by the respondent was flawed for failure in giving the dispossessed owner notice of the compulsory acquisition, notice of inquiry, disregarding the written representations and reasons or factors that it took in arriving at the award of 16th June 2015.

40. In summary the insufficiency of the notice can be seen in various ways, some of which are the particulars of the identity of the property were wanting. The Gazette Notice No 7090 stated the Land Reference Number only, the details of the registered owner approximate area affected were missing. The notice as contemplated under section 107 (5) was not served on the appellant. Nevertheless, the appellant became aware that the property was to be compulsory acquired. It does not state when he became aware

of it but on record it filed its written representations on the 30th March 2014 with the Respondent. On that date it must be pointed out that the respondent had not made a decision as to how much compensation was to be awarded in the matter.

41. It is true that the respondent states that it published a notice for acquisition in the Kenya Gazette. The said Notice No 7090 of 10th October 2014 has no sufficient particulars. This is a grave omission as the respondent is the custodian of the records of the land being acquired, including this one for the appellant. The import of this is makes the notice incomplete in respect to the details of the land being sought to be acquired. Clearly no evidence was placed before the Court that the notice was served upon the appellant. This is contrary to section 107(5) of the Land Act, 2012 aforesaid

42. Though the respondent contends that it gave notice of the inquiry requiring affected land owners and parties to submit claims on or before 10th March 2014, it has not put on record evidence of such notice and neither placed on record the evidence of due service on the appellant of such notice.

43. In both situations, the Act stipulates that the notices must be served on the registered owners and such other parties as are interested in the proposed properties for compulsory acquisition both on notification and inquiry stages. The procedure for compulsory acquisition has been aptly laid down in the case of **Patrick Musimba Vs National Land Commission & 4 others (2016) Eklr,** which is quoted below.

“In summary, the process of compulsory acquisition now runs as follows.

Under Section 107 of the Land Act, the National Land Commission (the 1st Respondent herein) is ordinarily prompted by the national or county government through the Cabinet Secretary or County Executive member respectively. The land must be acquired for a public purpose or in public interest as dictated by Article 40(3) of the Constitution. In our view, the threshold must be met: the reason for the acquisition must not be remote or fanciful. The National Land Commission needs to be satisfied in these respects and this it can do by undertaking the necessary diligent inquiries including interviewing the body intending to acquire the property.

Under Sections 107 and 110 of the Land Act, the National Land Commission must then publish in the gazette a notice of the intention to acquire the land. The notice is also to be delivered to the Registrar as well as every person who appears to have an interest in the land.

As part of the National Land Commission’s due diligence strategy, the National Land Commission must also ensure that the land to be acquired is authenticated by the survey department for the rather obvious reason that the owner be identified. In the course of such inquiries, the National Land Commission is also to inspect the land and do all things as may be necessary to ascertain whether the land is suitable for the intended purpose: see Section 108 of the Land Act.

The foregoing process constitutes the preliminary or pre-inquiry stage of the acquisition.

The burden at this stage is then cast upon the National Land Commission and as can be apparent from a methodical reading of Sections 107 through 110 of the Land Act, the landowner’s role is limited to that of a distant bystander with substantial interest.

Section 112 of the Land Act then involves the landowner directly for purposes of determining proprietary interest and compensation. The section has an elaborate procedure with the National Land Commission enjoined to gazette an intended inquiry and the service of the notice of inquiry on every person attached. The inquiry hearing determines the persons interested and who are to be compensated. The National Land Commission exercises quasi-judicial powers at this stage.

On completion of the inquiry the National Land Commission makes a separate award of compensation for every person determined to be interested in the land and then offers compensation. The compensation may take either of the two forms prescribed. It could be a monetary award. It could also be land in lieu of the monetary award, if land of equivalent value, is available. Once the award is accepted, it must be

promptly paid by the National Land Commission. Where it is not accepted then the payment is to be made into a special compensation account held by the National Land Commission: see Sections 113- 119 of the Land Act.

The process is completed by the possession of the land in question being taken by the National Land Commission once payment is made even though the possession may actually be taken before all the procedures are followed through and no compensation has been made. The property is then deemed to have vested in the National or County Government as the case may be with both the proprietor and the land registrar being duly notified: see Sections 120-122 of the Land Act.

If land is so acquired the just compensation is to be paid promptly in full to persons whose interests in land have been determined: See Section 111 of the Land Act. This is in line with the Constitutional requirement under Article 40(3) of the Constitution that no person shall be deprived of his property of any description unless the acquisition is for a public purpose and subjected to prompt payment in full of just compensation".

44. Article 40 of the Constitution guarantees every person the right to property. It protects a person from being arbitrarily deprived of his property by the state or a person. This right is not absolute and is qualified by sub-article (3) thereof which recognizes that a person may be deprived of his land by the state only where such 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.

45. Article 40 (2)(a) of the Constitution, Part VIII of the Land Act , 2012 as read together with the saved provisions of the now repealed Compulsory Acquisition Act, Cap 295 does not permit the respondent to engage in any arbitrary acts in both the procedure and the compensation in respect of the compulsory acquisition of land. The owners of the land as well; as those interested must be notified in writing. It is not enough to post a notice in the Kenya Gazette. Their views must be sought as to the compensation as well. The respondent is obligated to obey the rules of natural justice in all their actions by affording the parties a hearing. These rules have been fortified in the Constitution under Articles 40, 47 and 50 and the Fair Administrative Actions Act.

46. Notwithstanding lack of notice, the appellant submitted its written representations before the respondent reached its decision on the award. The respondent has admitted that it did not consider the written representations in their award. I will consider this conduct when handling the second issue.

47. Sufficiency of compensation? The respondent has correctly pointed out the correct procedure to be followed in compulsory acquisition and what to take account in arriving at an award. That notwithstanding there is a glaring omission on their part on the consideration of what the claim of the appellant is in respect to the portion of the land compulsorily acquired. The assessment was done entirely on the findings of the commission without the benefit of the actual claim of the appellant. This Court is not about to usurp the powers of the respondent in considering or assessing an award that is invalidly arrived without following the due and legal process as provided by law.

48. Accordingly, the Court declines any invitation to look into the merits or otherwise of the award at this stage because of the flawed procedure. The right to be heard and the right to be protected against arbitrary action on property as enumerated elsewhere in this judgement are constitutional right and any violation

goes to the root of the validity of any decision premised on the invalidity.

49. In the circumstances and based on the reasons given above, I do not consider that the compensation assessed by the respondent was validly arrived at and the final orders are as follows;

a. The appeal is hereby partially allowed.

b. The award of compensation in the sum of Kshs 86,928,500/- is set aside.

c. The respondent be and is hereby directed to conduct a fresh inquiry in respect to LR No. 337/4797 belonging to the appellant within 60 days from the date hereof.

d. The respondent to pay the costs of the appeal.

e. Parties be at liberty to apply where appropriate.

Orders accordingly.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 22ND SEPTEMBER 2017

J G KEMEI

JUDGE