



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**MILIMANI LAW COURTS**

**ELC. CASE NO. 1274 OF 2015**

**IN THE MATTER OF THE COMPULSORY ACQUISITION OF L.R. NO. 209/1162**

**IN THE MATTER OF ARTICLES 40(3 (B)), 67 OF THE CONSTITUTION OF KENYA**

**BETWEEN**

**FISH PROCESSORS (TWO THOUSAND) LTD..... PETITIONER**

**AND**

**THE NATIONAL LANDS COMMISSION.....RESPONDENT**

**JUDGMENT**

This suit was filed by way of a Petition dated 10<sup>th</sup> December 2015 and filed on 11<sup>th</sup> December 2015 by the Petitioner in which it sought for the following prayers:

- 1) A declaration that the Petitioner has the right of prompt payment in full of just compensation.
- 2) An order of mandamus to issue to the Chairman of the Respondent to release all sums due to the Petitioner in respect of the compulsory acquisition of Land Reference Number 209/11462 (hereinafter referred to as the “suit property”).
- 3) That in the event of non-compliance with order (2) above, an order do issue declaring the compulsory acquisition of the suit property as null and void and reverting ownership thereof to the Petitioner.
- 4) The cost of this Petition be awarded to the Petitioner.
- 5) That the Respondent be condemned to pay interest on the sums due from the date of the award till payment in full.

The Petition was supported by the Supporting Affidavit of Faraaz Tejani sworn on 10<sup>th</sup> December 2015 in which he averred that he is the Director of the Petitioner. He averred further that the Petitioner is the registered proprietor of the suit property situated in Embakasi area of Nairobi County. As proof of that assertion, he annexed the Petitioner’s title deed. He further stated that on 10<sup>th</sup> October 2014, vide Kenya Gazette Notice No. 7090, the Respondent through its Chairman Muhammed A. Swazuri, published and Intention to Acquire several properties listed in the said notice for purpose of the construction of the

Mombasa-Nairobi Standard Gauge Railway Project. He added that the suit property was one of the properties listed therein. He further averred that on 20<sup>th</sup> February 2015, vide Kenya Gazette Notice No. 1180 dated 17<sup>th</sup> February 2015, the Respondent published a Notice of Inquiring inviting all interested parties in the land being acquired to an inquiry to hear claims for compensation. He further averred that the inquiry in respect of the suit property was held on 13<sup>th</sup> March 2015 where the Petitioner presented the Respondent with a valuation assessment of compensation. He further indicated that on 14<sup>th</sup> October 2015, after evaluating the representations at the inquiry, the Respondent issued the Petitioner with an award of compensation, a copy of which he annexed. The award amounted to Kshs. 169,469,750/- (hereinafter referred to as the "Award"). He averred that the Petitioner duly accepted the Award on 20<sup>th</sup> October 2015 vide the acknowledgement of acceptance to the Respondent. He then averred that since that time up to date, the Respondent has yet to pay the Award to the Petitioner. He added that the Constitution requires prompt payment in full of just compensation where land has been acquired for a public purpose. He also added that the Respondent has in the meantime taken over possession of the suit property.

In response to the Petition, the Respondent filed the Replying Affidavit of Bernard Nzau sworn on 3<sup>rd</sup> March 2016, in which he averred that he is the Deputy Director, Valuation and Taxation of the Respondent. He averred that the Respondent has initiated the process of payment of the Award but this will take some time owing to the need to ascertain the legality of the claim of ownership. He added that no land owners in the wider area where the suit property is located have had their awards disbursed to them yet and therefore this is not an incident of singling the Petitioner out.

Both the Petitioner and the Respondent filed their respective written submissions.

The only issue arising for determination in this suit is whether the Petitioner is entitled to prompt payment in full of the Award. Article 40(3) of the Constitution of Kenya, 2010 provides as follows:-

**"The state shall not deprive a person of property of any description, or 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 5; 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;"**

Section 107 (1) of the Land Act, 2012 empowers the Respondent to acquire land on behalf of the national or county government for public purposes or in the public interest.

Section 111(1) of the Land Act, 2012 provides that,

**"If land is acquired compulsorily under this Act, just compensation shall be paid promptly in full to all persons whose interests in the land have been determined."**

It is clear in this suit that there is no dispute or contention on the Award given to the Petitioner by the Respondent. The only issue is the actual payment of the same. The law is very clear as set out above. The Petitioner is entitled to prompt payment in full of the Award. This entitlement to prompt payment in full cannot be overemphasized. This being the position, this court proceeds to grant the prayers sought in this Petition and directs that the Respondent do immediately proceed to disburse to the Petitioner the Award within 45 days from the date of delivery of this Judgment. The costs of this Petition are awarded to the Petitioner.

It is so ordered.

**DELIVERED, DATED AND SIGNED AT NAIROBI THIS 1<sup>ST</sup> DAY OF SEPTEMBER 2017.**

**MARY M. GITUMBI**

**JUDGE**