



Kariuki Enterprises Limited v Kenya National Highways Authority & another (Environment & Land Petition E015 of 2022) [2024] KEELC 994 (KLR) (22 February 2024) (Judgment)

Neutral citation: [2024] KEELC 994 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT & LAND PETITION E015 OF 2022
JG KEMEI, J
FEBRUARY 22, 2024**

BETWEEN

KARIUKI ENTERPRISES LIMITED PETITIONER

AND

KENYA NATIONAL HIGHWAYS AUTHORITY 1ST RESPONDENT

NATIONAL LAND COMMISSION 2ND RESPONDENT

JUDGMENT

The Pleadings

1. Kariuki Enterprises Limited, the Petitioner herein filed this Petition dated the 23/11/22 seeking the following orders;
 - a. A declaration that the purported compulsory acquisition of plot number L.R. No. 12861/252 IR number 61965 (suit land) situated in Thika within Kiambu County by the 1st Respondent without adhering to strict and mandatory provisions of the Land Acquisition Act, (now repealed) violates the Petitioner's Constitutional right guaranteed under Section 75 of the retired Constitution and Article 40(3) (a) & (b) of *the Constitution* of Kenya, 2010.
 - b. A declaration that the failure by the Respondents to comply with the mandatory provisions of the Land Acquisition Act violates the Petitioner's Constitutional right to administrative action that is lawful, reasonable and procedurally fair guaranteed under Article 47(1) of *the Constitution*.
 - c. A declaration that the Certificate of Title held by the Petitioner in respect of plot L.R. number 12861/252 IR number 61965 situated in Thika within Kiambu County constitutes conclusive evidence that the Petitioner is the absolute and indefeasible owner of the said property and the 1st Respondent has no legally recognized right over the property.



- d. A declaration that the purported compulsory acquisition of the suit property without complying with the mandatory provisions of the Land Acquisition Act is invalid, null, unlawful and/or irregular and an affront to Articles 40 and 47 of the 2010 Constitution.
 - e. A declaration that the 1st Respondent's action to purportedly lodge a restriction on the suit property is illegal, unprocedural and in contravention of the Petitioner's rights under Article 40 of *the Constitution*.
 - f. A Judicial Review order of Certiorari calling into this Court and quashing the purported decision by the Respondents to compulsorily acquire Plot L.R No. 12861/252 IR number 61965 situated in Thika within Kiambu County.
 - g. A Judicial Review order of Certiorari calling into this Court and quashing the purported decision by the 1st Respondent to place a restriction on plot L.R. No. 12861/252 IR number 61965 situated in Thika within Kiambu County.
 - h. A Judicial Review order of prohibition restraining the 1st Respondent, by itself, its servants, workmen, agents or any persons whomsoever claiming title of plot L.R. No. 12861/252 IR number 61965 or any other person whomsoever from occupying, accessing, trespassing, remaining onto, or in any other manner whatsoever from interfering with the Petitioner's use, title and occupation of plot L.R. No. 12861/252 IR number 61965 situated in Thika within Kiambu County.
 - i. Damages for violation of the Petitioner's Constitutional rights to own and enjoy property and to administrative action that is lawful, reasonable and procedurally fair.
 - j. Compensation in form of mesne profits for trespass and/or loss of income as a result of the 1st Respondent's trespassing on plot number 12861/252 IR number 61965.
 - k. Any other relief that the Court may deem fit to grant.
2. The Petitioner has premised the Petition on several Articles of *the Constitution* of Kenya being Articles 2, 3, 10, 19, 20, 22, 23(1), 23(3), 40, 40(3), 47, 60, 165(3), 232, 258 & 259. Equally Sections 3 - 11, 13, 19 & 20 of the Land Acquisition Act, Part VIII and Section 128 of the *Land Act*, Sections 26, 28 of the *Land Registration Act*, Section 6 of the *National Land Commission Act*, Section 23 of the *Kenya Roads Act* & Section 3, 4, and 12 of the Fair Administrative Actions Act have been invoked by the Petitioner.
 3. The Petitioner avers that it is the registered owner of the suit land and while carrying out improvements on the suit land in March 2018, its workers were stopped by the 2nd Respondent allegedly that they were encroaching a road reserve. That in June of 2022 it sought clearance to carry out subdivision of the land from the 1st Respondent who informed it that the suit land was compulsorily acquired on the 20/2/2009 and had transferred the full compensation to the 2nd Respondent in the sum of Kshs. 59,512,500/- for onward disbursement to the Petitioner. That consequently a restriction was registered on the suit land and as a result the land is not available for any other use other than for the improvement of the 1st Respondent's road network.
 4. The Petitioner maintains that the 1st Respondent has no legitimate proprietary, equitable or legal rights over the property and is a mere trespasser. The Petitioner faulted the Respondents for purporting to acquire its property without due process of the law thus contravening its rights to property and fair administrative actions. That the actions of the Respondents are manifestly unreasonable, ultra vires and unlawful, it is averred. That the Petitioner has been prevented from enjoying quiet possession of



- the land due to a restriction registered on the title yet it has dutifully paid rates and land rent over the years.
5. In its Replying Affidavit sworn on the 15/2/2023, Daniel Mbuteti deponed that he is the senior Surveyor in the 1st Respondent's office and duly authorized to swear the affidavit. He stated that the suit land was compulsorily acquired alongside various other properties for the construction of the Thika Super Highway in accordance with the applicable law as the same was required for public benefit in line with Article 40 (3) of the Constitution of Kenya and Part VIII of the Land Act.
 6. He stated that the suit land was lawfully acquired from the Petitioner by the 1st Respondent and relevant inquiries with respect to the acquisition process was conducted vide Gazette Notice No 1396 of 20/2/2009. The Petitioner was awarded Kshs 59,512,500/- as compensation for the suit land and the developments therein at the time particulars of which are within the knowledge of the Petitioner and the 2nd Respondent in line with its mandate under Section 113(1) of the Land Act.
 7. Further that the Petitioner accepted the award in full satisfaction of the compulsory acquisition of the suit land and the developments therein. In addition, that the Petitioner was an active participant in all land acquisition inquiries / sittings held at Ruiru District office on the 10/7/2009. That the 1st Respondent forwarded the compensation monies to the 2nd Respondent in line with its mandate under Section 115(1) of the Land Act. That the 1st Respondent has entered into the suit land and exercises full control and possession over the said property.
 8. Joycelyn Makena swore a Replying Affidavit on the 18/5/2023. She stated that she is a Director, Valuation and Taxation Department in the 2nd Respondent's office and therefore competent and duly authorized to so swear the affidavit on its behalf.
 9. She deponed that the 2nd Respondent is an independent Commission established under the Article 67(1) of the Constitution and Operationalized under the National Land Commission Act No. 5 of 2012 mandated to manage all public land on behalf of the National and County Governments.
 10. It was her averment that the alleged acquisition was undertaken by the office of the Commissioner of Lands in the year 2009 before the 2nd Respondent came into existence in 2012 and therefore all the records pertaining to the said acquisition are in the custody of the Ministry of Lands and not the 2nd Respondent. That notwithstanding the 1st Respondent remitted the compensation funds to the Commission for onward transmission to the lawful owner of the suit land. That the Commission cannot remit the compensation to the Petitioner without the necessary documents in respect to the acquisition such as the valuation report for the suit land.
 11. The deponent stated that the 2nd Respondent has never placed a restriction on the suit land. In addition, she stated that the orders sought should be addressed to the Ministry of Lands who fully participated in the acquisition of the land. She averred that having not been involved in the acquisition process, the Petitioner's allegations of Constitutional infringement are misplaced. Further that the claim of the Petitioner is merely a civil action that is already time barred and is camouflaged as a Petition to defeat the statutory timelines under the Limitation of Actions Act.
 12. In a Further Affidavit sworn on the 14/6/2023 by Kariuki Maina on behalf of the Petitioner, averred that the response of the 1st Respondent is replete with mere depositions devoid of evidence and therefore the Petition in the main remains uncontroverted.
 13. The Petitioner further stated that; it did not participate in the alleged acquisition enquiries; the Gazette notice on its own is not sufficient to divest the Petitioner of its legal title in the land where due process was not followed; was not served with the notice to acquire the land; no plans for the area to be acquired



- were brought to the attention of the Petitioner; no notice of inquiry was served on the Petitioner; no evidence of written award of compensation to the Petitioner; no evidence that the compensation was forwarded to the 2nd Respondent.
14. That the purported entry of the suit land by the 1st Respondent is unlawful and deprives the Petitioner of its right to peaceful and quiet use, possession, occupation enjoyment of the land.
 15. The deponent averred that the 2nd Respondents Replying Affidavit is defective for want of signature of the deponent, undated and uncommissioned and should be struck out for being a defective pleading. That the 2nd Respondent is the successor of the office of the Commissioner of Lands by dint of the provisions of Section 30 and 32 of the [National Land Commission Act](#). All actions by or on behalf of the Ministry of Lands before the existence of the Act are deemed to have been carried out by or on behalf of the National Land Commission and therefore the 2nd Respondents contention that it is a stranger to the alleged acquisition is baseless in law and an attempt to abrogate its Constitutional mandate. That the orders sought against the 2nd Respondent are improper.
 16. On the issue of time bar the deponent stated that the period of limitation does not apply to violation of the rights and freedoms guaranteed under [the Constitution](#) and in any event the law of limitation cannot shield the Respondents from claims of enforcement of fundamental rights protected under the Bill of Rights that the 2nd Respondent has admitted receipt of the compensation of funds in favour of the Petitioner which confirms the receipt of the breach of its Constitutional rights to property. The act of holding onto the funds intended for compensation of the Petitioner on account of not being in possession of the relevant documentation is dishonest and further that the 2nd Respondent has not demonstrated any effort to obtain the said alleged documentation from the Ministry of Lands nor notified the Petitioner of being in possession of the said funds. All in all the deponent states that the confirmation that funds are lying with the 2nd Respondent is testament that the prompt payment of compensation is yet to be complied with.
 17. On the 23/3/2023 parties elected to canvass the Petition by way of written submissions which submissions have been read and considered.

The application for contempt of Court dated the 6/7/2023

18. The Petitioner filed the Notice of Motion dated 6/7/2023 expressed under Sections 1A, 1B, 3, 3A of the [Civil Procedure Act](#), Section 5 [Judicature Act](#) and Section 29 [Environment and Land Court Act](#). In the main he sought an order that this court do issue summons to the Director General of the 1st Respondent Eng. Kungu Ndungu, to personally appear before court and show cause why he should not be cited for contempt of court for disobeying the Court orders of 16/2/2023 and accordingly be committed to civil jail.
19. The Motion is supported by the Affidavit of its Director Kariuki Maina. He deponed that on 16/2/2023 this Honourable Court issued an interim conservatory order restraining the 1st Respondent from interfering with plot L.R No. 12861/252 IR Number 61965 (hereinafter the suit land). That the order annexed as KM1, was extracted served and duly received by the 1st Respondent's Director General on 10/3/2023. Despite knowledge of the restraining order, on 9/4/2023 the 1st Respondents in blatant disregard dug up trenches for erection of fencing poles on the suit land, planted trees and undertook extensive excavations thereon hence the application. Copies of photographs and a video were annexed as KM3.
20. The Application is opposed.



21. The 1st Respondent's Senior Surveyor Daniel Mbuteti swore his Replying Affidavit on 14/7/2023. He deponed that the 1st Respondent did not in any way disobey the court order for interim injunction and instead it is the Applicant who is in breach for continued developments on the suit land. That the alleged actions by the Applicant are not at its behest but attributed the same to a business rival as it has happened in past incidents. That the photographs and videos presented to court are unverified and noting the ramifications of contempt proceedings, thorough investigations and sufficient proof of the allegation are key. He urged the court to dismiss the application and entire Petition with costs.

The submissions of the Petitioner

22. It was submitted that the 2nd Respondents Replying Affidavit dated the 5/6/23 is fatally defective as it is neither dated Commissioned and or signed and therefore the averments of the Petitioner in its affidavit against the 2nd Respondent are uncontroverted. Equally that the 1st Respondents Replying Affidavit contains mere depositions devoid of evidence and the averments in the Petitioners affidavit in support of the Petition are unsupported.
23. Relying on the case of Daniel Toritich Arap Moi v Mwangi Stephen Muriithi & Anor [2014] eKLR the Petitioner submitted that the 1st Respondents submissions dated the 6/6/23 raise new matters by way of evidence not pleaded in the Replying Affidavit in total disregard to the settled principle that parties are bound by their pleadings and that submissions can never take the place of evidence. In particular the purported reference to the Gazette Notice Nos 6034 and 6035 of 11/7/2008 and the addenda Gazette Notice Nos 8748 of 20/2/2009 and reference to proceedings in MCELC No 2019 of 2018 have not been pleaded in the 1st Respondents affidavit.
24. As to whether the suit land was procedurally compulsorily acquired, the Petitioner submitted that the Respondents failed to demonstrate any evidence on gazettelement, inquiry and compensation, the three being the sine qua non to validity of the compulsory acquisition. In buttressing this proposition the Petitioner relied on the decision of the Court in Attorney General v Zinji Limited (PET 1 of 2020) ; Elizabeth Wambui Githinji & 29 Others v Kenya Urban Roads Authority & 4 Others [2019] eKLR.
25. It was further submitted that the 1st Respondent neither issued the requisite notices of acquisition and inquiry nor conducted the relevant inquiry precedent to the alleged acquisition contrary to Section 6(2) of the repealed Land Acquisition Act Cap 295 (LAA). That the notice of inquiry is a mandatory requirement as stated in the case of Mutuma Angaine Vs M'Marete M'Muronga (2011) eKLR where the Court held that;

“It is clear from the above Act, that the Government has the power to acquire land by compulsion for a public purpose or benefit. However, it is trite law that when a person's property is forcefully acquired the Government must fully comply with the law, and follow the laid down procedure strictly and meticulously. No person's property may be acquired compulsorily without due process. Section 6(2) of the Act aforesaid requires that certain critical steps be taken before a person is deprived of his or her property. That Section requires that a notice of intention to acquire the land shall be published in the Gazette, and be served upon every person who appears to be interested in that land. This was not done, despite its mandatory requirement. There was no notice published in the Gazette in respect of plot 1836, and certainly no notice was served on the Respondent. The provisions of the Section 6 (2) envisage personal service on persons with an interest in the land intended to be compulsorily acquired.”



26. The Petitioner submitted that no compensation was paid to it as can be attested by the Respondents who are agreed that the funds are sitting with the 2nd Respondent with no notice nor effort to release to the Petitioner contrary to Section 10-13 of the Land Acquisition Act. The Petitioner relied on the case of Patrick Musimba v National Land Commission & 4 Others (2016) eKLR where the Court stated as follows;

“In our view, a closer reading of Article 40(3) of *the Constitution* would reveal that *the Constitution* did not only intend to have the land owner who is divested of his property compensated or restituted for the loss of his property but sought to ensure that the public treasury from which compensation money is drawn is protected against improvidence. Just as the owner must be compensated so too must the public coffers not be looted. It is that line of thought that , under Article 40(3), forms the basis for “prompt payment in full, of just compensation to the person” deprived of his property through compulsory acquisition.”

27. It was the Petitioner’s further submissions that the process of acquisition was not finalized as envisaged under Sections 19 and 20 of the LAA in that neither the possession nor vesting of the property has been done rendering the alleged acquisition baseless. That the mere publication of a gazette notice without compliance with the other mandatory provisions of the law cannot form the basis of a lawful acquisition of the land. In the case of Virendra Ramji Gudka & 3 Others v Attorney General [2014] eKLR the Court stated;

“The fact is there were no records of the acquisition at the Lands registry and/or with the Director of Surveys. In my view a Gazette Notice for the intended acquisition alone cannot effectuate a compulsory acquisition and in order to effectuate the acquisition the procedure for acquisition as under the Act has to be adhered to. The Gazette Notice for the acquisition and the Gazette Notice notifying the payment of the compensation can only affect the parties directly affected such as the registered proprietors at the time the notice of compulsory acquisition is given. Third parties dealing with the acquired land can only be put on notice if the process of acquisition is completed and the provisions of sections 19 and 20 of the Act complied with.”

28. Relying on the case of Rutongot Farm Limited v Kenya Forest Service & 3 Others [2018] eKLR the Petitioner stated that the purported compulsory acquisition by the Respondents has denied him its right to peaceful and quiet possession occupation use and enjoyment of the suit property as guaranteed under Article 40 of *the Constitution* of Kenya. That the Petitioner has suffered damage and loss on account of a restriction placed on the suit land by the 1st Respondent.

29. The Petitioner submitted that its rights to fair administrative actions was violated by the Respondents by failing to give prior and adequate notice before acquiring the land; failing to give the Petitioner the opportunity to be heard and make representations at the compensation inquiry hearings allegedly held at Ruiru; failing to give the Petitioner the information, materials and evidence relied upon in making the decision to acquire the land; failing to give the information to the Petitioner on the details of the compensation allegedly released to the 2nd Respondent.

30. Lastly the Petitioner submits that having demonstrated infringement of its Constitutional rights it is entitled to the prayers and relief sought in addition to other appropriate reliefs fashioned by the Court.



31. On the award of damages as compensation for the violation of its rights to property, the Petitioner relied on the case of *AG v Zinj Limited* (supra) where the Court held that;

“Among the reliefs that a court could grant upon proof of violation of a fundamental right, was an order for compensation. The quantum of damages to be awarded, depended on the nature of the right that was proven to have been violated, the extent of the violation, and the gravity of the injury caused.

Having determined that the Respondent’s right to property had been violated by the Government, the trial court, and later the appellate court, made orders for compensation in favour of the Respondent. Both courts granted special and general damages. As we have arrived at a similar conclusion, we see no reason to interfere with the findings of the two superior courts in this regard.

... In case of general damages, a court of law exercises discretion guided by the circumstances of each case.”

32. It was submitted that in the present case the Petitioner’s rights to use and enjoy property is compounded by the express admission that the alleged compensation has never been paid to the Petitioner over 14 years since the purported acquisition. The Petitioner submitted a sum of Kshs 294.0 Million as general damages for the blatant violations of the Petitioner’s rights. The Petitioner submitted that the value of the land is estimated at Kshs 20 Million per acre at the prevailing market rates.

Respondents’ submissions

33. As to whether the land was compulsorily acquired in accordance with the law, the 1st Respondent submitted that gazettelement and inquiry were duly undertaken as provided for under the law. Further that pursuant to Section 13(1) of the repealed Land Acquisition Act (LAA), the 1st Respondent’s duty ended when it deposited the compensation funds with the 2nd Respondent.
34. On possession it was submitted that the 1st Respondent having paid the relevant compensation awarded for onward transmission to the Petitioner, the 1st Respondent can be deemed to have constructively taken possession of the of the suit land. That the Petitioner lost its rights and title in the suit land when the same was compulsorily acquired by the 1st Respondent.
35. On compensation for damages and mesne profits, the 1st Respondent submitted that the Petitioner failed to point out with precision how its rights and freedoms were violated. The 1st Respondent refuted the claim of trespass on the land arguing that its conduct was in line with a lawful action of taking possession.
36. The 2nd Respondent on the other hand stated that it came into existence in 2012 and denied the claim of violation of the Petitioner’s rights because the Commission did not take part in the compulsory acquisition of the Petitioner’s land. It submitted that the process was undertaken by the Commissioner of Lands then mandated to acquire land on behalf of other government agencies. It submitted that all the processes of acquisition were undertaken and that the Petitioner has not established any cause of action against the 2nd Respondent.
37. Further the Petitioner was faulted for bringing a claim that is time barred, having been filed 13 years later. For that reason, it was submitted that the Petitioner is not entitled to the reliefs sought.



Analysis and determination

38. Having considered the Petition, the written submissions and all the material placed before me the following issues fall for determination;
- a. Whether the jurisdiction of the Court has been properly invoked.
 - b. If yes whether the compulsory acquisition of the Petitioner's land was lawful.
 - c. Whether the Petitioner is entitled to the reliefs sought.
 - d. Whether the 1st Respondent is in contempt of the Court orders issued on the 27/2/2023
 - e. Who meets the cost of the Petition?
39. It is not in dispute that the Petitioner is the registered owner of the suit land going by the certified copy of the title issued on 15/12/1993. It is the Petitioner's case that he discovered in 2018 that the Respondents purported to have acquired its land compulsorily, an undertaking that he claims was contrary to the law. That the process of acquisition being the gazettelement, inquiry and compensation was never done.
40. The 1st Respondent on the other hand states that all the relevant procedures to wit; gazettelement of intention to acquire the land, inquiries and the compensation was carried out. That although the land was acquired in 2008 it is only in 2017 that the compensation funds were forwarded to the 2nd Respondent for onward payment to the Petitioner. That pursuant to the compulsory acquisition and payment of the compensation thereof the 1st Respondent took over the possession of the land and insist that an overriding interest was thereby created in its favour despite the step of vesting the property in its name having not been undertaken.
41. The 2nd Respondent distanced itself from the alleged acquisition and stated that it was not involved having been created in 2012 and the said acquisition having taken place in 2008. That the Ministry of Lands and the Commissioner of Lands carried out the acquisition and therefore it cannot be faulted. It however admitted holding the sum of Kshs 59 Million received from the 1st Respondent for payment to the Petitioner but has been unable to pay because of lack of information with respect to the valuation and other relevant documentation which it opines is in the custody of the Ministry of Lands.
42. With respect to the issue of jurisdiction, the Court has taken judicial notice of the provisions of Sections 133 A-E of the *Land Act* 2019 which creates the Land Acquisition Tribunal (LAT). For purposes of emphasis I shall reproduce the provisions on its jurisdiction as follows;
- “ 133C. Jurisdiction of the Tribunal
- (1) The Tribunal has jurisdiction to hear and determine appeals from the decision of the Commission in matters relating to the process of compulsory acquisition of land.
 - (2) A person dissatisfied with the decision of the Commission may, within thirty days, apply to the Tribunal in the prescribed manner.
 - (3) Within sixty days after the filing of an application under this Part, the Tribunal shall hear and determine the application.



- (4) Despite subsection (3), the Tribunal may, for sufficient cause shown, extend the time prescribed for doing any act or taking any proceedings before it upon such terms and conditions, if any, as may appear just and expedient.
- (5) If, on an application to the Tribunal, the form or sum which in the opinion of the Tribunal ought to have been awarded as compensation is greater than the sum which the Commission did award, the Tribunal may direct that the Commission shall pay interest on the excess at the prescribed rate.
- (6) Despite the provisions of sections 127, 128 and 148 (5), a matter relating to compulsory acquisition of land or creation of wayleaves, easements and public right of way shall, in the first instance, be referred to the Tribunal.
- (7) Subject to this Act, the Tribunal has power to confirm, vary or quash the decision of the Commission.
- (8) The Tribunal may, in matters relating to compulsory acquisition of land, hear and determine a complaint before it arising under Articles 23 (2) and 47 (3) of *the Constitution*, using the framework set out under the *Fair Administrative Action Act* or any other law.

133D. Appeals

SUBPARA (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 —

SUBPARA (a)

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

SUBPARA (b)

the Tribunal failed to determine some material issue of law or usage having the force of law;
or

SUBPARA (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.

SUBPARA (2)

An appeal from the decision of the Tribunal may be made on a question of law only.”

43. The Court notes that the LAT is now in operation (see Gazette Notices No. 11840 and 11841 dated 7/9/2023). The Court has reflected on the cause of action of the Petitioner and in line with the provisions set out above and is satisfied that this is a matter that ought to be filed in the LAT and not this Court.
44. The Court would like to echo the decision of the Supreme Court of Kenya in *Benson Ambuti Atega v Kibos Distillers Ltd & 5 Others* [2020] eKLR where the Court espoused the doctrine of judicial



restraint in a case where parliament has created an alternative forum for dispute resolution. It stated as follows;

“(51) Judicial abstention, as with judicial restraint, is a doctrine not founded in constitutional or statutory provisions, but one that has been established through common law practice. It provides that a Court, though it may be vested with the requisite and sweeping jurisdiction to hear and determine certain issues as may be presented before it for adjudication, should nonetheless exercise restraint or refrain itself from making such determination, if there would be other appropriate legislatively mandated institutions and mechanism.”

45. The Court of Appeal in the case of Speaker of the National Assembly v James Njenga Karume [1992] eKLR put it succinctly as follows;

“In our view, there is considerable merit in the submission that where there is a clear procedure for the redress of any particular grievance prescribed by *the Constitution* or an Act of Parliament, that procedure should be strictly followed.”

46. Going by the decisions of the superior Courts read together with the provisions of Section 133D of the *Land Act* the Court appreciates that the jurisdiction of this Court with respect to matters compulsory acquisition is appellate in nature.

47. For the reasons stated above this Court downs its tools and refers the matter to the LAT for hearing and determination.

48. The Court having held as above the issue of contempt of Court is now moot. For avoidance of doubt the application dated the 6/7/2023 is now moot. It is overtaken by events.

49. In the upshot the Petition herein is hereby struck out and I make no orders as to costs.

50. Orders accordingly.

DATED, SIGNED & DELIVERED AT THIKA VIA MICROSOFT TEAMS THIS 22ND DAY OF FEBRUARY, 2024.

J G KEMEI

JUDGE

Delivered online in the presence of

Sahi HB Mbugua for Petitioner/Applicant

Munga for 1st Respondent

Munga HB Kisengese for 2nd Respondent

Court Assistants – Phyllis/Oliver

