



**Mohamed v Lapsset Corridor Development Authority & 2 others (Environment & Land Petition E004 of 2022) [2024] KEELC 4866 (KLR) (20 June 2024) (Judgment)**

Neutral citation: [2024] KEELC 4866 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT GARISSA  
ENVIRONMENT & LAND PETITION E004 OF 2022**

**JM MUTUNGI, J**

**JUNE 20, 2024**

**BETWEEN**

**HON. ABDIHAKIM OSMAN MOHAMED ..... PETITIONER**

**AND**

**LAPSSET CORRIDOR DEVELOPMENT AUTHORITY ..... 1<sup>ST</sup> RESPONDENT**

**THE NATIONAL LAND COMMISSION ..... 2<sup>ND</sup> RESPONDENT**

**THE GARISSA COUNTY GOVERNMENT ..... 3<sup>RD</sup> RESPONDENT**

**JUDGMENT**

1. The Petitioner filed the Petition dated 26<sup>th</sup> April 2022, which he subsequently amended on 21<sup>st</sup> June 2022. By the Amended Petition the Petitioner prayed for orders:-
  1. An order and declaration do issue that the Respondents have acted in breach of Articles 40, 42, 43, 47 and 63 of *the Constitution* of Kenya, 2010.
  2. A permanent injunction order do issue restraining the Respondents by themselves, their agents, servants or proxies from constructing the Lapset Corridor within the community land situated at Fafi Constituency in Garissa County or in any manner interfering with the community's possession of the said property by constructing, forcible entry and/or usage in any other manner whatsoever.
  3. In the alternative to prayer (2), an order do issue requiring the 1<sup>st</sup> and 2<sup>nd</sup> Respondents to pay compensation through the Interested Party to the residents of Fafi Constituency whose land is traversed by the Lapsset Corridor.
  4. General damages and exemplary damages emanating from the violation of the community's right and fundamental freedoms under *the Constitution* of Kenya, 2010.



5. Costs of this Petition together with interests thereon at Court rates.
2. The Petition is predicated on the facts set out in the Amended Petition and the grounds contained in the Supporting Affidavit sworn by the Petitioner in support of the Notice of Motion seeking conservatory orders and in support of the Petition. The Petitioner was the Honourable Member of Parliament for Fafi Constituency and brought the Petition in public interest on behalf of the residents of Fafi Constituency within Garissa County. The Petitioner averred that pursuant to the Kenya Gazette Notice No. 1553 of 15<sup>th</sup> February 2019, the 2<sup>nd</sup> Respondent sought to acquire land within Garissa County for the purpose of constructing the Lapsset project, which was to be undertaken by the 1<sup>st</sup> Respondent. The Petitioner averred that, the 1<sup>st</sup> Respondent rolled out the implementation of the Lapsset project within the Fafi Constituency and did so without observing the statutory and constitutional principles of public participation and compulsory acquisition of land. According to the Petitioner, the residents of Fafi Constituency were neither informed nor involved in the process of compulsory acquisition of their land. He stated that the residents had not been compensated for their land as is required under the Law. It was the Petitioner's position that the Respondents acted in breach of Articles 40, 42, 43, 47, 63 (1) and (4) of *the Constitution* of Kenya. He claimed that the action by the Respondents infringed the rights of the residents to a fair hearing and administrative action as a decision involving their land was taken without their participation.
3. The 1<sup>st</sup> Respondent filed Grounds of Opposition dated 30<sup>th</sup> May 2022 opposing the application. The 1<sup>st</sup> Respondent prayed that the Petitioner's application be dismissed for three reasons: firstly, that the Petitioner's application had not met the mandatory requirement for granting a temporary injunction; Secondly, that the jurisdiction of this Court had been invoked prematurely as the concerns raised by the Petitioner would have been addressed at the inquiry stage of the compulsory acquisition; and thirdly, that the Petitioner had not demonstrated any breach of *the Constitution* or any other law by the Respondents. The 1<sup>st</sup> Respondent filed its Replying Affidavit dated 12<sup>th</sup> July 2022 through Stephen Ikua, its Director and Chief Executive Officer. He admitted that the 1<sup>st</sup> Respondent was actualizing various Lapsset infrastructure project components within Lamu, Garissa, Isiolo, Meru, Samburu, and Turkana and concerning Garissa County, he averred that consultative discussions have continuously been held with the Garissa County Government elected leaders, County Executives and Staff of the County Government Departments, Members of Parliament, Garissa Members of County Assembly, Leaders, Members of the public and other Representatives of the Garissa County Community. He stated that these stakeholder engagement meetings have been held since 2018, and the 1<sup>st</sup> Respondent, the Ministry of Lands & Physical Planning, and the Ministry of Petroleum & Mining addressed the issues raised in the Petition. It was the 1<sup>st</sup> Respondent's position that while the National Land Commission spearheaded the land acquisition process in Garissa County, the County leadership and the Local Community were actively engaged through stakeholder meetings organized by the 1<sup>st</sup> Respondent. According to the 1<sup>st</sup> Respondent, it also conducted the Strategic Environment Assessment and the Environmental & Social Impact Assessment (ESIA) for the Lapsset Infrastructure Corridor. The Director of the 1<sup>st</sup> Respondent also deponed that the Petitioner had written to NEMA, accusing the 1<sup>st</sup> Respondent of disregarding the environmental concerns raised by the project and failing to undertake public participation. He averred that NEMA responded to these allegations and stated that the 1<sup>st</sup> Respondent had complied and that its Strategic Environmental Assessment had been approved. It was the 1<sup>st</sup> Respondent's position that compulsory acquisition was a process, and the Petitioner needed to wait for the inquiry stage to raise his grievances at that stage. He maintained that the Petitioner had not demonstrated any breach of *the Constitution* or any other law on the part of the 1<sup>st</sup> Respondent and urged that the Petition be dismissed.



4. The 3<sup>rd</sup> Respondent filed its' Replying Affidavit on 13<sup>th</sup> September 2023 through its County Attorney, Khadija Mohamed. The 3<sup>rd</sup> Respondent averred that the land in question was unregistered community land, and as such, it had the mandate to hold the land on behalf of the residents of Fafi Constituency. The 3<sup>rd</sup> Respondent further averred that the residents of Fafi Constituency had been consulted and averred that the Petitioner had not demonstrated an arguable case, nor had he led evidence to show that the damages that the residents would suffer could not be adequately compensated by way of damages. The 3<sup>rd</sup> Respondent noted that there existed a process for acquiring community land for public use and that the Petitioner had invoked the jurisdiction of this Honourable Court prematurely. The 3<sup>rd</sup> Respondent further contended that the Petitioner lacked locus standi to sue regarding the subject matter. According to the 3<sup>rd</sup> Respondent, the Petitioner had failed to demonstrate a prima facie case and prayed that the suit be dismissed with costs.
5. The parties were in agreement that the application seeking conservatory orders and the Petition be heard together to fast track the hearing of the Petition. The Court accordingly on 20<sup>th</sup> February 2023 directed the parties to canvass the Petition by way of written submissions.
6. The Petitioner filed its written submissions on 24<sup>th</sup> July 2023 and submitted on three issues: Whether the Petitioner had locus standi to institute the petition; Whether the 1<sup>st</sup> and 2<sup>nd</sup> Respondent conducted public participation, and if so, whether it was conducted in accordance with Article 10 of *the Constitution*; and finally, Whether the Petitioner and the residents of Fafi Constituency are entitled to prompt and justifiable compensation for the compulsory acquisition of their suit land.
7. Regarding the first issue, the Petitioner submitted that he had locus standi to institute the suit for the reason that he filed the instant Petition in the year 2022 when he was a Member of Parliament for Fafi Constituency for and on behalf of the residents of his Constituency. He relied on the Cases of Gideon Mbuvi Kioko vs Attorney General & another (2017) eKLR and Mumo Matemu vs Trusted Society of Human Rights Alliance & 5 others (2013) eKLR. Concerning the second issue, the Petitioner submitted that the 1<sup>st</sup> and 2<sup>nd</sup> Respondents had not met the requisite threshold that was set in Khelef Khalifa & 2 others versus the Independent Electoral and Boundaries Commission and another (2017) eKLR in regard to what constitutes adequate public participation. Regarding the third issue, the Petitioner submitted that the 1<sup>st</sup> and 2<sup>nd</sup> Respondent started constructing on the suit land without first compensating the affected residents as the law requires.
8. The 3<sup>rd</sup> Respondent filed its written submissions on 28<sup>th</sup> March, 2023. Counsel for the 3<sup>rd</sup> Respondent submitted that the Petitioner had failed to establish a prima facie case with any probability of success and also failed to show the irreparable harm he would suffer if the injunctive relief was not granted. Counsel further submitted that where it was established that there was an urgent necessity for the acquisition of land, Section 120 (2) of the *Land Act*, 2012, permitted the 2<sup>nd</sup> Respondent to acquire land compulsorily without following the normal procedure for compulsory acquisition.

Section 120 (2) of the *Land Act*, 2012 provides as follows:-

120(2) In cases of where there is an urgent necessity for the acquisition of land, and it would be contrary to the public interest for the acquisition to be delayed by following the normal procedures of compulsory acquisition under this Act, the Commission may take possession of uncultivated or pasture or arable land upon the expiration of fifteen days from the date of publication of the notice of intention to acquire, and on the expiration of that time the Commission shall, notwithstanding that no award has been made, take possession of that land in the manner prescribed by subsection (1).



9. The 1<sup>st</sup> Respondent filed its written submission on 10<sup>th</sup> August 2023 and interalia submitted that the petitioner had failed to cite the constitutional provisions violated with reasonable precision as had been decided in *Anarita Karimi Njeru Versus the Republic*, 1980 KLR 1272 and in *Mumo Matemu Versus Trusted Society of Human Rights Alliance and Others* (supra) Counsel submitted that the 2<sup>nd</sup> Respondent spearheaded the compulsory acquisition of the suit land and involved all the stakeholders including the local community and the County Leadership of Garissa County. Counsel further submitted that the public interest outweighed individual and/or private interest as the project being undertaken by the 1<sup>st</sup> Respondent was for the benefit of the greater public as opposed to private individual interests.

### **Analysis and determination**

10. I have reviewed the pleadings and considered the submissions of the parties and the issues that arise for determination in this Petition are as follows:-
1. Whether the Petitioner had locus standi to institute the present suit.
  2. Whether the Petition satisfied the threshold established in the *Anarita Karimi Njeru* case on the requirement of the alleged constitutional breaches being pleaded with reasonable degree of precisions?
  3. Whether due process was followed in compulsorily acquiring the suit land and in particular whether there was adequate public participation?
  4. Whether the Petitioner/Applicant's application meets the threshold for grant of injunction.
11. Article 258 of *the Constitution* of Kenya provides as follows:
- (1) Every person has the right to institute court proceedings, claiming that this Constitution has been contravened, or is threatened with contravention.
  - (2) In addition to a person acting in their own interest, court proceedings under clause (1) may be instituted by—
    - (a) a person acting on behalf of another person who cannot act in their own name;
    - (b) a person acting as a member of, or in the interest of, a group or class of persons;
    - (c) a person acting in the public interest; or
    - (d) an association acting in the interest of one or more of its members.
12. In *Mumo Matemu vs. Trusted Society of Human Rights Alliance & 5 Others* (supra) the Court of Appeal stated at paragraph 27 of its Judgment thus:-

“Moreover, we note that our commitment to substantive justice, public participation, inclusiveness, transparency, and accountability under Article 10 of *the Constitution*, by necessity and logic, broadens access to the courts. In this broader context, this Court cannot fashion nor sanction an invitation to a Judicial standard for locus standi that places hurdles on access to the courts except only when such litigation is hypothetical, abstract, or an abuse of the judicial process. In the case at hand, the Petition was filed before the High Court by an NGO whose mandate includes the pursuit of constitutionalism. Therefore, we reject the argument of lack of standing by counsel for the Appellant. We hold that in the absence of a showing of bad faith as claimed by the Appellant, without more, the 1<sup>st</sup> respondent had the



locus standi to file the Petition. Apart from this, we agree with the Superior Court below that the standard guide for locus standi must remain the command in Article 258 of *the Constitution*.”

13. Under *the Constitution*, the issue of locus has been expanded, and under Article 258(1)(b) of *the Constitution*, every person has the right to institute Court proceedings, claiming that *the Constitution* has been contravened or is threatened with contravention and such proceedings can be brought inter alia by a person acting as a member of, or in the interest of, a group or class of persons. Similarly, under Article 22(2)(b) of *the Constitution*, every person has the right to institute court proceedings claiming that a right or fundamental freedom in the Bill of Rights has been denied, violated, or infringed, or threatened.
14. The Petitioner herein was a Member of Parliament of Fafi Constituency and a resident of Fafi Constituency. He claims to have filed the Petition on behalf of his constituents. In my view, under the aforesaid provisions of *the Constitution*, the applicant had locus to institute this Petition.

**Whether the Petition precisely discloses the particulars of the constitutional violations allegedly committed by the Respondents.**

15. It is a principle that in constitutional litigation, a party that alleges a violation of his or her rights must plead with reasonable precision in regard to the manner in which there has been such an alleged violation. This proposition was enunciated in the case of Anarita Karimi Njeru vs The Republic (1976-1980) KLR 1272 where the court stated:-

“Constitutional violations must be pleaded with a reasonable degree of precision.

16. The Articles of *the Constitution*, which entitles rights to the Petitioner, must be precisely enumerated, and the claim pleaded to demonstrate such violation with the violations being precise. Furthermore, the manner in which the alleged violations were committed and to what extent must be shown through evidence based on the pleadings.
17. The Court of Appeal reaffirmed the principle established in the Anarita Karimi Njeru case (supra) in the Case of Mumo Matemu vs Trusted Society of Human Rights Alliance & 5 Others (supra). In their Judgment at Paragraph 4A their Lordships stated as follows:-

“We wish to reaffirm the principle holding on this question in Anarita Karimi Njeru (Supra). In view of this, we find that the petition before the High Court did not meet the threshold established in that case. At the very least, the 1<sup>st</sup> Respondent should have seen the need to amend the Petition so as to provide sufficient particulars to which the Respondents could reply. Viewed thus, the petition fell short of the very substantive test the High Court referenced. In view of the substantive nature of these shortcomings, it was not enough for the Superior Court below to lament that the Petition before it was not the “epitome of precise, comprehensive, or elegant drafting,” without requiring remedy by the 1<sup>st</sup> Respondent...”

18. In the Case of Dr. Rev. Timothy Njoya vs The Hon. Attorney General and Kenya Review Authority (2014) eKLR the Court observed as follows;

“The Petitioner cannot come to court to seek facts and information he intends to use to prove the case that he is arguing. He must also plead his case with some degree of precision and set out the manner in which *the Constitution* has been violated by whom and even state



the Article of *the Constitution* that has been violated and the manner in which it has been violated.”

19. On perusal of the Petitioner’s pleadings, the evidence, and the parties’ submissions, I am satisfied that the Petition has met the requirements of a Constitutional Petition. The Petitioner has pleaded the provisions of *the Constitution* that he complains were violated; he has demonstrated the manner he avers his rights and those of the residents of Fafi Constituency were violated, infringed, or threatened by the Respondents. He has also adduced evidence to demonstrate the alleged violations. The Petition was therefore properly before the Court and ought to be considered and adjudicated on its merits.

### **Whether due process was followed in compulsorily acquiring the suit land?**

20. Article 40 (3) of *the Constitution*, provides as follows:

- (3) The State shall not deprive a person of property of any description, or of 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 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.

21. Compulsory acquisition is regulated by Part VIII of the *Land Act*, No. 6 of 2012. It has three main stages: pre-inquiry, inquiry, and completion stage. Compulsory acquisition is initiated by either the National or County Government. By dint of Section 107 of the *Land Act* 2012, either government may request the National Land Commission to acquire a particular land on its behalf. When this request is made, the Act requires the NLC to ensure that the request is in line with Article 40 (3) of *the Constitution* and that the land is needed for a public purpose and/or in the public interest. Upon the approval of the request, the NLC is mandated to publish a preliminary notice to that effect in the Kenya Gazette and County Gazette. A copy of this notice should also be delivered to the Registry for entry into the register and to everyone interested in the said land. This is the Pre-Inquiry stage.

22. After the 30-day period from publication, the NLC must appoint a hearing date and invite interested persons with issues of propriety and claims for compensation. Section 112 of the *Land Act* requires the NLC to publish this invitation in a notice in the Gazette or County Gazette. At the hearing, the NLC must determine who the persons interested in the land are and receive their compensation claims. Upon the inquiry’s conclusion, the NLC should prepare a written award with a separate compensation award for every interested person. With a notice of the award and offer of compensation, this award should be given to everyone the NLC has determined to be interested in the land. Section 114 (2) of the *Land Act*, states that with the agreement by the NLC and the interested person, the interested person can receive a land grant in place of the award. Once the award is accepted, it must be promptly paid by the National Land Commission. Where it is not accepted, the payment will be made into a special compensation account held by the National Land Commission; see Sections 113- 119 of the *Land Act*. The compulsory acquisition is completed when the NLC takes possession of the land in question and pays just compensation in full. Section 120 (2) of the Act however allows the NLC to take possession of land in cases of urgent necessity and where it would be contrary to the public interest to follow the normal procedures of compulsory acquisition.



23. The Court in the Case of African Gas and Oil Company Limited v Attorney General & 3 others [2016] eKLR while affirming the position envisaged by Section 120(2) of the Land Act stated thus:-
- “First, it is correct that section 120 (2) of the Land Act empowers the 3<sup>rd</sup> Respondent, in cases where there is an urgent necessity for the acquisition of land, and it would be contrary to the public interest for the acquisition to be delayed by following the normal procedures of compulsory acquisition under the Land Act, to take possession of land upon the expiration of fifteen days from the date of publication of the notice of intention to acquire.”
24. In this Petition the Petitioner has challenged the procedure adopted by the Respondents and the lack of compensation for the compulsory acquisition by the Respondents. The 1st Respondent, on its part, holds that due process was adhered to and suggests that the Petitioner brought this matter to Court prematurely as at the time of filing the petition.
25. It is not in dispute that the compulsory acquisition of this land was necessary to implement the Lapsset Corridor within Fafi Constituency. There is also no controversy about implementing the Lapsset Corridor, which is meant to serve and benefit the public. The acquisition was certainly for a public purpose. The Petitioner has, however, disputed the procedure adopted in the acquisition process. He has asserted that the residents of Fafi did not receive any compensation and public participation was not adhered to.
26. Public participation forms part of the core values and principles of the Constitution of Kenya, and under Article 10(2) is provided as one of the national values and principles of governance in Kenya. It is, therefore, a necessary stage in compulsory acquisition of land. The Black’s Law Dictionary, Tenth Edition, page 1294, defines “participation” as “the act of taking part in something, such as partnership, a crime, or a trial. 2. The right of an employee to receive part of business’s profit-sharing.”
27. Public participation is not a mere consultation or public relation exercise without a meaningful purpose. Article 10(1) and (2) (a) of the Constitution provide as follows:-
- 1) The national values and principles of governance in this Article bind all State Organs, State Officers, Public Officers and all persons whenever any of them—
    - (a) Applies or interprets this Constitution;
    - (b) Enacts, applies or interprets any law; or
    - (c) Makes or implements public policy decisions
  - 2)
    - (a) Patriotism National Unity, sharing and devolution of power, the rule of Law, democracy and participation of the people.
28. In the matter of Peter Makau Musyoka and Award of Mining Concessionary Rights to the Mui Coal Basin Deposits – Constitutional Petition No. 305 of 2012 (2015) eKLR, the Court stated thus:
- “..... Public participation is a national value that expresses the people's sovereignty as articulated under Article 1 of the Constitution. Article 10 makes public participation a National Value as a form of expression of sovereignty. Hence, public participation is an established right in Kenya; a justifiable one – indeed one of the corner stone of our new democracy.”



29. In the present Petition there is no dispute that indeed the land for the development of the LAPSET CORRIDOR was required and it was for public purpose. The threshold of public purpose or public interest spelt out under Article 40(3) of *the Constitution*, in my view was satisfied. The question that remains is whether the Respondents adhered to the laid down procedure in carrying out the acquisition of the land. The 1<sup>st</sup> Respondent asserted that all stakeholders including the County Government representatives, elected leaders and members of the public were involved in the public participation. The National Land Commission spearheaded the process of land acquisition and prepared a report on public participation annexed to the 1<sup>st</sup> Respondent's Replying Affidavit exhibited as "S11". The report sets out in detail how public participation was carried out in all the affected areas.
30. Public participation cannot mean that every person must be consulted and/or that every view must be accepted and acted on. The scope of public participation in my view would be that the persons of the public affected or likely to be affected should be afforded an opportunity to have their views and concerns respecting the intended project heard and considered before the project is implemented. Not every citizen affected can be heard but a forum ought to be provided where the views of the citizens are heard and sampled and the final decision to implement or not implement ought to factor and take into consideration the views gathered during public participation.
31. In the present Petition, I am, having regard to the 1<sup>st</sup> Respondent's and 3<sup>rd</sup> Respondent's Replying Affidavits, and more specifically the report on "public participation on land acquisition for the Lapsset Corridor Programme" prepared by the National Land Commission and exhibited by the 1<sup>st</sup> Respondent, satisfied that there was sufficient public participation conducted and there was no breach of the requirement for public participation. I have made a finding that the Lapsset project was indeed a public project and there was necessity for land to be acquired for public purpose within the ambit of Article 40(3) of *the Constitution* for the project to be implemented. I have further held that there was adequate and sufficient public participation in regard to the implementation of the project. The issues that remain for consideration is whether the land to be acquired was community land and who was to be paid compensation for the land and whether prompt compensation had been made as required under Article 40(3) of *the Constitution*.

### **Whether the land is community land and who was entitled to be compensated?**

32. The Petitioner has argued the land was community land and belonged to the residents of Fafi Constituency. Section 2 of the *Community Land Act*, 2016 defines community as follows:-
- "Community" means a consciously distinct and organised group of users of community land who are citizens of Kenya and share any of the following attributes –
- a. Common ancestry;
  - b. Similar culture or unique mode of livelihood;
  - c. Social economic or other similar common interest;
  - d. Geographical space;
  - e. Ecological space; or
  - f. Ethnicity
33. Article 63(3) of *the Constitution* provides that any unregistered land shall be held in trust by the County Government on behalf of the communities for which it is held: Section 6 of the Land Community



Act reiterates that County Governments shall hold all unregistered community land on behalf of the communities and subsection (2) provides as follows:-

6(2) The respective County Government shall hold in trust for a community any monies payable as compensation for compulsory acquisition of any unregistered community land.

34. Section 7(1) of the [Community Land Act](#) provides the procedure for registration of communities and requires that any community claiming an interest in or right over community land shall be registered in accordance with the provisions of Section 7 of the Act. The Petitioner acknowledges their community land is not registered and consequently the County Government of Garissa remains the custodian of the land as a trustee. Section 8 of the [Community Land Act](#) requires that all community land be adjudicated and surveyed before being registered by the Community Land Registrar. To the extent that the Petitioner had not complied with Section 7 and 8 of the [Community Land Act](#), in my view it was the Garissa County Government as trustee of the community land, who had mandate to deal with issues relating to the project implementation by the 1<sup>st</sup> Respondent and the compulsory acquisition acting on behalf of the community. Of course the members of the public (community) were to be involved in the process of public participation and it is my view that they were involved. Thus whereas the land where the project was being implemented constituted community land within the meaning of Article 63 of [the Constitution](#) it was the County Government of Garissa as trustee of the Community land who were entitled to represent the community interest and in the case of compulsory acquisition ensure that they complied with the provisions of Section 6 of the [Community Land Act](#) in regard to any monies paid as compensation.
35. In regard to the issue of compensation, it is not in dispute that the National Land Commission gave notice of Intention to compulsorily acquire for public purpose the land that the Petitioner claims was community. Consequent to the Notice of Intention a Notice of Inquiry under Section 112(1) of the [Land Act](#), 2012 was to be issued. It has not been made clear whether or not such notice was issued but apparently had not been issued as at the time the Petition was filed. It is the National Land Commission that has the sole mandate of undertaking the compulsory acquisition process as outlined under Part VIII of the [Land Act](#), 2012 Sections 107 to 133; The National Land Commission makes an inquiry and prepares a written award under Section 113 of the Act which the commission is supposed to promptly pay under Section 115 of the Act unless the person supposed to receive the amount does not consent or there is a dispute. In the event of a dispute the commission is required to pay the amount of the award into a special account to await the resolution of the dispute where upon it releases the funds to the beneficiary adjudged to be entitled.
36. The Lapsset Corridor Project is a transnational project and of major public interest. The project has tremendous economic ramifications for the region and significantly will open up and spur economic growth for the North Eastern Region of Kenya and the residents of Fafi Constituency without doubt will be direct beneficiaries from the project. The completion of the project will serve the wider public interest as opposed to the individual private interest of perhaps a few people in Fafi Constituency.
37. The project having been of an International character with immense financial outlay, the timeous execution of the project was critical and in those circumstances, the commission in my view was properly entitled to proceed under the provisions of Section 120(2) of the [Land Act](#), 2012 and take possession of the land subject of compulsory acquisition within Fafi Constituency. Section 120(2) of the [Land Act](#), 2012 provides:-
- 120.(2) In cases of where there is an urgent necessity for the acquisition of land, and it would be contrary to the public interest for the acquisition to be delayed by following the normal procedures of compulsory acquisition under this Act, the Commission may take possession



of uncultivated or pasture or arable land upon the expiration of fifteen days from the date of publication of the notice of intention to acquire, and on the expiration of that time the Commission shall, notwithstanding that no award has been made, take possession of that land in the manner prescribed by subsection (1).

38. The project was of great public interest and the implementation was critical to meeting, the overall objective of interlinking the multi infrastructural corridor integrating railway, road and oil pipeline transport running from Lamu Port at the Indian Ocean – South Sudan and Ethiopia. Given the nature of the project meeting timelines in the implementation was vital and it was thus prudent for the commission to hand possession of the land to the 1<sup>st</sup> Respondent before the process of compulsory acquisition was completed. The execution of the project was in public interest, of priority and of an urgent nature.
39. The *Land Act* 2012 under Section 107 to 133 has set out an elaborate and exhaustive procedure of land acquisition where it is deemed the land requires to be compulsorily acquired for a public purpose. The assessment of value for compulsorily acquired land equally is adequately dealt with and the Land Value (Amendment) Act, 2019 established the criteria for assessing value for compulsorily acquired freehold land under a new Section 107A of the *Land Act*, 2012 which under subsection (1) provides as follows:-
- 107A Valuation of freehold land and Community land for purposes of compensation under this (1) Act shall be based on the provisions of this part and the land value index developed for that purpose by the cabinet Secretary in consultation with County Governments and approved by the National Assembly and the Senate.
39. In the instant Petition, the Petitioner came to Court before an inquiry as to compensation was made under Section 112 of the *Land Act*, 2012 and consequently the commission had not gotten to the stage of making an award. As I have observed earlier in this Judgment the nature of the project was such as justified the Commission to proceed under the provision of Section 120 (2) of the *Land Act*, 2012 to take possession of the subject land before the normal procedures relating to compulsory acquisition were satisfied. I hold that the Petitioner’s move to Court was premature and that he ought to have awaited the Commission to make inquiry and to make and publish an award.
42. In the premises I find no fault in the actions of the Respondents and I hold that the Petition lacks merit and is dismissed. The Petition concerned a matter of public interest and in exercise of my discretion direct that the parties meet their own costs of the Petition.

**JUDGMENT DATED, SIGNED AND DELIVERED VIRTUALLY THIS 20<sup>TH</sup> DAY OF JUNE 2024.**

**J. M. MUTUNGI**

**ELC - JUDGE**

