



REPUBLIC OF KENYA



KENYA LAW
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**Kariuki v National Land Commission & 2 others (Land Case
E003 of 2024) [2024] KEELC 5848 (KLR) (22 August 2024) (Ruling)**

Neutral citation: [2024] KEELC 5848 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
LAND CASE E003 OF 2024**

**BM EBOSO, J
AUGUST 22, 2024**

BETWEEN

GEOFFREY KAMAU KARIUKI PLAINTIFF

AND

NATIONAL LAND COMMISSION 1ST DEFENDANT

KENYA NATIONAL HIGHWAYS AUTHORITY 2ND DEFENDANT

CHINA WU YI LIMITED 3RD DEFENDANT

RULING

1. Falling for determination in this ruling are two preliminary objections. The first preliminary objection is dated 22/1/2024 and was filed by the 1st defendant through Ms Matilda Kisengese. The second preliminary objection is dated 23/1/2024 and was brought by the 3rd defendant through M/s Muthoga & Omari Advocates. The two notices of preliminary objection raise a common ground of objection. The two defendants contend that the primary adjudicatory jurisdiction over the dispute in this suit is vested in the Land Acquisition Tribunal, adding that the jurisdiction of this court has been invoked prematurely.
2. The 1st defendant's submissions were not uploaded. The 3rd defendant uploaded written submissions dated 22/3/2024 through their advocates, Muthoga & Omari Advocates. Counsel for the 3rd defendant submitted that the single issue falling for determination in the preliminary objection is whether the Environment & Land Court has original jurisdiction to hear and determine the plaintiff's application [sic]. Counsel contended that the reliefs sought by the plaintiff fall within the ambit of compulsory acquisition. It was the position of counsel that Section 133C of the *Land Act* vests original jurisdiction in relation to this dispute in the Land Acquisition Tribunal. Counsel urged the court to dismiss the suit.



3. The court has considered the application. The court has also considered the submissions that were tendered. The single question to be answered in this ruling is whether the jurisdiction of this court has been invoked prematurely.
4. The broad jurisdiction of this court is donated by Article 162 (2) (b) of the [Constitution](#). Broadly, the court is vested with jurisdiction to hear and determine disputes relating to: (i) environment; and (ii) occupation, use and title to land. the [Constitution](#) empowered Parliament to elaborate further the jurisdiction of the court in more details through legislation. Indeed, Section 13 of the [Environment and Land Court Act](#) elaborates the jurisdiction of the court as follows:
 - “(1) The Court shall have original and appellate jurisdiction to hear and determine all disputes in accordance with Article 162(2)(b) of the [Constitution](#) and with the provisions of this Act or any other law applicable in Kenya relating to environment and land.
 - (2) In exercise of its jurisdiction under Article 162(2)(b) of the [Constitution](#), the Court shall have power to hear and determine disputes——
 - (a) relating to environmental planning and protection, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources;
 - (b) relating to compulsory acquisition of land;
 - (c) relating to land administration and management;
 - (d) relating to public, private and community land and contracts, choses in action or other instruments granting any enforceable interests in land; and
 - (e) any other dispute relating to environment and land.
 - (3) Nothing in this Act shall preclude the Court from hearing and determining applications for redress of a denial, violation or infringement of, or threat to, rights or fundamental freedom relating to a clean and healthy environment under Articles 42, 69 and 70 of the [Constitution](#).
 - (4) In addition to the matters referred to in subsections (1) and (2), the Court shall exercise appellate jurisdiction over the decisions of subordinate courts or local tribunals in respect of matters falling within the jurisdiction of the Court.
 - (5) Deleted by [Act No. 12 of 2012](#), Sch.
5. Besides the [Environment and Land Court Act](#), Parliament has enacted various statutes which vest primary jurisdiction over specific disputes in different Tribunals while reserving for this court appellate jurisdiction over the same disputes. Kenya’s superior courts have accepted this architecture and have, in a line of decisions, held that where the primary jurisdiction of a court is not exclusive and Parliament has created other primary adjudicatory bodies, claimants must exhaust the primary adjudication mechanism provided by the statute before moving to the superior courts that are vested with both original and appellate jurisdiction.



6. Indeed, in *Njenga Karume v Speaker of the National Assembly*, the Court of Appeal stated 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. We observed without expressing a concluded view that Order 53 of the *Civil Procedure Rules* cannot oust clear constitutional and statutory provisions....”
7. The plaintiff in this suit contends that he is “the owner” of land parcel number Sigona/1334 “pursuant to a general power of attorney dated 15/6/2022” donated to him by his mother, Jane Mukuhi Kariuki, who is the sole administrator of the estate of the late John Kariuki Gituere. He seeks the following reliefs against the defendants:
 - a. The Honourable Court do issue an Order compelling the defendants to fully and promptly compensate the plaintiff for acquisition of this property at the current market value.
 - b. The Honourable Court do issue an order stopping the defendant from evicting the plaintiff from the suit property until monetary compensation is paid.
 - c. The Honourable Court do issue an order stopping the defendant from trespassing into the suit property until monetary compensation is paid.
 - d. Costs and interest of the suit.
 - e. Any other relief that this Honourable Court may deem just to grant.
8. A reading of the plaint reveals that the dominant issue in this suit is the plea for compensation following compulsory land acquisition. In its wisdom, Parliament, through the *Land Act* created the Land Acquisition Tribunal under Section 133A of the *Act*. Section 133 C (6) of the *Land Act* vests in the Tribunal primary jurisdiction to adjudicate all disputes relating to compulsory acquisition of land. Section 133 D of the *Land Act* read together with Section 16A of the *Environment and Land Court Act* vest in the Environment and Land Court appellate jurisdiction to hear appeals from the Land Acquisition Tribunal.
9. Given the above judiciary architecture, it is clear that the jurisdiction of this court has been invoked prematurely. The proper body to deal with this dispute at the level of primary adjudication is the Land Acquisition Tribunal. This dispute has been brought before the Environment and Land court prematurely. That is the finding of the court. That is, however, not all.
10. In his plaint, the plaintiff averred that he is the “owner” of land parcel number Sigona/1334 “pursuant to a general power of attorney” donated to him by his mother, Jane Mukuhi Kariuki. He added that the donor of the power of attorney is the sole administrator of the estate of the late John Kariuki Gituere who is the registered proprietor of the suit land.
11. If indeed this is the correct position, this court has doubts that the power of attorney which the plaintiff is waving gives him the *locus standi* to mount any legal claim in relation to the suit land. The court doubts that an administrator appointed under the *Law of Succession Act* can delegate her statutory powers through a general power of attorney. An administrator is a trustee appointed by the court to promptly administer the estate of the deceased. She has no power to surrender her statutory mandate to any other person through a general power of attorney. If Jane Mukuhi Kariuki is unable to discharge her statutory mandate, the legal thing to be done is to approach the succession court for her substitution. Clearly, the purported power of attorney which the plaintiff is waving is an illegal instrument. This is,



however, not the reason this suit stands to be struck out. The suit stands to be struck out because the jurisdiction of the court has been invoked prematurely.

12. Consequently, the point raised in the two notices of preliminary objection is upheld. This suit is hereby struck out as opposed to being dismissed. The plaintiff shall bear costs of the suit.

DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA ON THIS 22ND DAY OF AUGUST 2024

B M EBOSO

JUDGE

