



**Wainaina v National Land Commission & another (Environment & Land
Case E172 of 2024) [2024] KEELC 6631 (KLR) (24 September 2024) (Ruling)**

Neutral citation: [2024] KEELC 6631 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E172 OF 2024
MD MWANGI, J
SEPTEMBER 24, 2024**

BETWEEN

CHEGE WAINAINA PLAINTIFF

AND

NATIONAL LAND COMMISSION 1ST RESPONDENT

KENYA NATIONAL HIGHWAYS AUTHORITY 2ND RESPONDENT

RULING

(In respect of the preliminary objection by the 1st Defendant against the Plaintiff's suit premised on part VIIIA of the [Land Act](#))

Background

1. The Plaintiff's suit was initiated through the plaint dated 29th April, 2024. The Plaintiff claims a sum of Kshs. 34,453,665/-, being the balance of the compensation for the compulsory acquisition of part of his Land by the National Land Commission on behalf of the Kenya National Highways Authority (KENHA) for purposes of the construction (expansion) of A104, James Gichuru – Rironi Junction Road Project. The 1st Defendant paid the Plaintiff a sum of Kshs. 94,038,915/- out of the total of Kshs.1128,492,580/- way back in the year 2020 and has since failed and or neglected to pay the balance of Kshs. 34,453,665/- further causing the Plaintiff loss amounting to Kshs. 35,389,000/- in terms of expected rental income as at the date of filing suit. The Plaintiff claims the same from the Defendants.
2. Alongside the plaint, the Plaintiff filed a Notice of Motion application of even date seeking to restrain the Defendants from taking possession the portion of the property earmarked for the project until the balance of Kshs.34,453,665/- and lost earnings amounting to Kshs.35,389,000/- are paid in full, and with interest at commercial rates.



3. In response to the Plaintiff's application, National Land Commission, the 1st Defendant herein raised a preliminary objection against the entire suit on 2 grounds, namely;
 - a. That the Honourable court lacks jurisdiction to entertain, hear and determine the matter by dint of part VIIIA of the Land Act.
 - b. That the suit herein is incompetent as it offends section 133C of the Land Act which gives jurisdiction to the Land Acquisition Tribunal to hear and determine appeals from the decision of the commission in matters relating to the process of compulsory acquisition of Land.
4. The 1st Defendant therefore prays that the Plaintiff's suit be struck out with costs.
5. Upon service of the preliminary objection by the 1st Defendant, the Plaintiff filed a further replying affidavit whereby he termed the preliminary objection by the 1st Defendant as malicious, misconceived, bad in law and an abuse of the court process calculated to delay the course of justice and waste judicial time. The Plaintiff asserts that his suit is for purposes of enforcement of the outstanding balance of the compensation money awarded to him plus accumulated interest and consequential issues. He has never challenged the acquisition of part of his property by the 1st Defendant. He too accepted the decision of the Commission and more so the award of Kshs.128,492,580/-.
6. The deponent reiterates that he is merely following up payment of the balance due to him as pleaded in his case. He asserts that this court has the jurisdiction to hear and determine his case. The process of compulsory acquisition was concluded and all that remains is payment of the balance of the award.
7. the 2nd Defendant informed the court that he was in support of the preliminary objection by the 1st Defendant.

Court's Directions.

8. The court's directions were that the preliminary objection by the 1st Defendant be dispensed with first, before the hearing of the application by the Plaintiff, and by way of written submissions. The 1st Defendant filed its submissions dated 14th July, 2024 in support of its preliminary objection.

Issues for Determination

9. The sole issue for determination is whether the suit by the Plaintiff amounts to an appeal against the decision of the commission. Dependent on the finding, the court will then determine if it has the jurisdiction to determine the suit.

Analysis and Determination

10. Part VIII of the Land Act provides an elaborate procedure for compulsory acquisition of Land. The National Land Commission plays a critical role in the process as variously outlined in the law.
11. The request for acquisition of Land compulsorily is submitted to the Commission either by the national or the county government. The Commission has the mandate to reject such a request if it establishes that the request does not meet the prescribed criteria and guidelines established under Section 107(2) of the Land Act. The Commission may also reject such a request if it is not satisfied that the request meets the requirements of Article 40(3) of the Constitution.
12. Where the Commission accepts and approves the request, it is required to publish a notice in the prescribed form, to that effect, in the Kenya Gazette and the County Gazette and deliver a copy of it to the Registrar and every person who appears to be interested in the Land.



13. 'Interested persons' shall include any person whose interests appear in the Land registry and the spouse or spouses of any such person as well as any person actually occupying the Land and the spouse or spouses of any such person.
14. The criteria for assessing value for compulsorily acquired Land is provided for under Section 107A and 107B of the [Land Act](#) for purposes of determining the just compensation to be awarded.
15. At least 30 days after publishing the notice of intention to acquire Land, the Commission is required to set a date for purposes of an inquiry, to hear issues of proprietary and claims for compensation by persons interested in the Land. At the inquiry, the Commission is required to make a full inquiry into and determine who are the persons interested in the Land and receive written claims of compensation from those interested in the Land. In conducting the inquiry, the Commission has the powers of the court to summon and examine witnesses including persons interested in the Land, to administer oaths and affirmations and to compel the production and delivery of documents of title to the Land.
16. It is upon conclusion of the inquiry that the Commission prepares a written award in which it shall make a separate award of compensation for every person whom it has determined to have an interest in the Land. The Commission shall serve on each such person a notice of the award and offer of compensation. Thereafter, the Commission is enjoined under Section 15 of the [Land Act](#) to PROMPTLY pay compensation in accordance with the award to the persons so entitled.
17. A person dissatisfied with the decision of the Commission may, within 30 days apply to the Tribunal in the prescribed manner. The Tribunal is the Land Acquisition Tribunal established under Section 133A of the [Land Act](#).
18. From the above analysis of the provisions of the [Land Act](#), the decision of the Commission appealable to the Tribunal may be either on the approval of the request for acquisition of Land, assessment of value of the Land to be acquired compulsorily or the determination of the persons interested in the Land and the amount of compensation to any such person after an inquiry under Section 112 of the [Land Act](#).
19. In this case, the Plaintiff deposes that he accepted the Commission's decisions and awards. He has not appealed against the decision(s) of the Commission. This suit is not an appeal from the decision(s) of the Commission either. He is only pursuing the balance of the compensation amount which is long overdue, the accumulated interest and the incidental losses.
20. Having carefully assessed and analyzed the pleadings filed by the Plaintiff, I agree with the Plaintiff's averments in his further affidavit and submissions. The Plaintiff's suit is in pursuit of the balance of the compensation money awarded by the Commission.
21. The Plaintiff has not in any way challenged the decision(s) of the National Land Commission. His suit does not as insinuated by the 1st Defendant amount to an appeal as contemplated under Section 133C of the [Land Act](#).
22. The Preliminary Objection by the 1st Defendant is therefore misconceived and lacking in merit. It is hereby dismissed with costs to the Plaintiff.

It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 24TH DAY OF SEPTEMBER, 2024.

M.D. MWANGI

JUDGE



In the virtual presence of:

Ms. Wanini for the 1st Defendant

Mr. Ogembo for the 2nd Defendant

N/A by the Plaintiff

Court Assistant: Yvette

