



REPUBLIC OF KENYA



**KENYA LAW**  
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**Nuclear Investment Limited v Nairobi County Government & 2 others (Civil Suit 393 of 2018) [2025] KEELC 722 (KLR) (18 February 2025) (Judgment)**

Neutral citation: [2025] KEELC 722 (KLR)

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT NAIROBI**  
**CIVIL SUIT 393 OF 2018**  
**EK WABWOTO, J**  
**FEBRUARY 18, 2025**

**BETWEEN**

**NUCLEAR INVESTMENT LIMITED ..... PLAINTIFF**

**AND**

**NAIROBI COUNTY GOVERNMENT ..... 1<sup>ST</sup> DEFENDANT**

**NATIONAL LAND COMMISSION ..... 2<sup>ND</sup> DEFENDANT**

**NAIROBI METROPOLITAN SERVICES ..... 3<sup>RD</sup> DEFENDANT**

**JUDGMENT**

1. The suit was commenced vide a plaint dated 11<sup>th</sup> September 2018 seeking for several reliefs against the Defendant. Later vide an amended plaint dated 23<sup>rd</sup> August 2022 the Plaintiff included the then Nairobi Metropolitan Services as a 3<sup>rd</sup> Defendant to this suit and sought for the following reliefs:-
  - a. Compensation for the entire suit property at Kshs. 190,050,000/=
  - b. A permanent injunction restraining the defendants, their agents, assigns or any other person claiming under the behest from trespassing, demolishing or otherwise interfering with the Plaintiff's quiet possession of L.R 209/136/258.
  - c. Special damages assessed at Kshs. 1,295,000/= for the damaged perimeter fence.
  - d. General damages for trespass.
  - e. Compensation for breach of the Plaintiff's fundamental rights and freedom.
  - f. Costs and interest at court rates.
2. It was the Plaintiff's case that it is the registered proprietor of all that parcel of land known as LR 209/136/258 situated along Kirinyaga Road adjacent to globe round about.



3. It was averred that the Plaintiff observed all conditions of the leasehold title including paying all land rates, ground rent, county government business permits and any other levies that have been required from time to time by the 1<sup>st</sup> Defendant.
4. It was contended that since purchasing of the said property and transferring it to its name on 13<sup>th</sup> May 2004 it enjoyed quiet and peaceful occupation of the premises without notice or contention of its right to title until on or about 3<sup>rd</sup> September 2018 around 4am when the 1<sup>st</sup> Defendant invaded the suit premises heavily guarded by personnel from the administration police and the National Youth Service and demolished the entire perimeter wall subsequently causing damage to the property and exposed it to looters.
5. It was further contended that no notice or reasons for the said illegal acts had been offered to the Plaintiff and neither was it given an opportunity to be heard. It was contended further that sometimes in April 2020, the 1<sup>st</sup> and the 3<sup>rd</sup> Defendant further encroached on the suit premises and compulsorily acquired a part of the suit premises measuring approximately 0.006 Hectares. After the said encroachment, the Plaintiff contacted Wamae Muriithi & Associates to conduct a valuation of the entire suit property owing to the fact that the parcel of land left behind was not economically viable as the Plaintiff could not up any economic development as intended.
6. According to the Plaintiff the property was inspected on 13<sup>th</sup> November 2020 and the Valuer delivered the valuation report dated 13<sup>th</sup> November 2020 which assessed the property value at Kshs. 190,050,000/=.
7. The Plaintiff averred that no notices were issued and the 1<sup>st</sup> Defendant's actions were illegal and malicious. Particulars of which were pleaded at paragraph 14 of the Plaintiff.
8. The suit was contested by the Defendants, the 1<sup>st</sup> Defendant filed a Statement of Defence denying the averments made in the plaint. The 1<sup>st</sup> Defendant also denied that the Plaintiff had suffered any damage, loss of business or property of any value. The said defence was filed on 31<sup>st</sup> October 2022.
9. The 2<sup>nd</sup> Defendant filed a Statement of Defence on 3<sup>rd</sup> March 2023. The 2<sup>nd</sup> Defendant denied ever making or initiating any process in respect to the compulsory acquisition of the said land. It averred that it is not liable to compensate nor pay any damages to the Plaintiff. It was also averred that the plaint as filed by the Plaintiff raises no reasonable cause of action against the 2<sup>nd</sup> Defendant and as such the suit ought to be dismissed.

### **Hearing and evidence**

10. The matter proceeded for hearing on 28<sup>th</sup> March 2023. Paul Kinyanjui Ndungu a Director of the 1<sup>st</sup> Defendant and Steven Boniface Mureithi Wamae a Valuer testified as PW1 and PW2 respectively in support of the 1<sup>st</sup> Defendants case.
11. PW1 relied on his witness statement dated 11<sup>th</sup> September 2018 and the Plaintiff's bundle together with the supplementary bundle of documents that was on record in his evidence in chief.
12. When cross-examined he stated that his land was grabbed by the Defendants and they had promised to work with National Land Commission to ensure that he is compensated however, the same did not happen. He stated that he never received any documents in respect to compulsory acquisition despite attending a meeting in respect to the same. He also stated that the 3<sup>rd</sup> Defendant is the one who took his land and promised to compensate him.



13. When re-examined, he stated that he received a letter dated 13<sup>th</sup> October 2020 confirming that Nairobi Metropolitan Services had taken over the land. He also stated that National Land Commission had received their letter on 14<sup>th</sup> October 2020.
14. PW2 the Valuer produced his report dated 13<sup>th</sup> December 2020 in respect to valuation of L.R No. 209/136/258 for the purposes of compensation. He also stated that as per his report, the remainder of the land after acquisition could not be put to any meaningful use and hence that was the basis upon which the entire land was valued for compensation.
15. The witness stated that he relied upon the comparable method of valuation. He considered the ongoing sale of the area and also the report on the land value index in Kenya of August 2016 developed by the Ministry of Lands and Physical Planning as it was then.
16. On the loss of profit, it was his testimony that the land was being used as a parking site for motor vehicles which would be charged Kshs. 250/= per day. He therefore considered about 314 working days in a year and provided outings at the rate of 5% per income and arrived at a figure of Kshs. 41,000,000/= as loss of profit. He also stated that he considered the developments in the suit property, depreciation costs, disturbances taken at 15% and after all the tabulation the same was valued at Kshs. 196,050,000/=
17. When cross-examined, he stated that he understands the compulsory acquisition process in Kenya. He also stated that from the information he received it was Nairobi Metropolitan Services that had indicated its intention to acquire the road and compensation was to be pursued by Nairobi Metropolitan Services with National Land Commission.
18. He further stated that he was not aware of any evidence to the effect that Nairobi Metropolitan Services had requested to acquire the land. He did not see any notice of intention to acquire the land and neither were any inquiries carried out.
19. When re-examined, he stated that the road that was constructed was a public road.

### **Submissions**

20. The Plaintiff filed written submissions dated 19<sup>th</sup> May 2023 while the 2<sup>nd</sup> Defendant filed a written submissions dated 28<sup>th</sup> July 2023. A perusal of the CTS showed that the 1<sup>st</sup> Defendant uploaded its written submissions dated 3<sup>rd</sup> February 2025, however upon perusing the same, the said submissions were in respect to ELC Case No. 70 of 2009 which was not the case under consideration.
21. The Plaintiff submitted on the following issues:-
  - a. Whether the 1<sup>st</sup> and 3<sup>rd</sup> Defendants actions were unlawful.
  - b. Whether the Plaintiff is entitled to the reliefs sought.
  - c. Whether the Plaintiff is entitled to the orders sought.
22. It was submitted that the actions of the Defendants are an infringement of the Plaintiff's right to property as provided under Article 40 of the Constitution. It was also submitted that PW2 had testified that there was a public road in the suit property that had been constructed by the 3<sup>rd</sup> defendant who was undertaking duties on behalf of the 1<sup>st</sup> Defendant at that time.
23. While referring to the case of Patrick Musimba =Versus= National Land Commission & 4 Others (2016) eKLR it was argued that the Plaintiff was entitled to just and equivalent compensation for the land.



24. On whether the Plaintiff is entitled to the reliefs sought, it was submitted that after the encroachment, the entire suit could not be utilised and hence the Plaintiff was entitled to compensation of Kshs. 190,050,000/=. It was argued that the valuation report had provided a fair market value of the suit property which property should guide in awarding the said claim.
25. In respect to special damages sought. It was submitted that the Plaintiffs had proved that the total cost of the damage was estimated to be Kshs. 1,295,000/= and the Plaintiff was entitled to the same.
26. On general damages, it was submitted that the Plaintiff had demonstrated that the Defendants unlawfully and without due regard to its right trespassed on the suit property damaged its property and unlawfully acquired a portion of the same without any compensation as a result of which it had suffered loss and damages and thus entitled to compensation for general damages for trespass. The cases of Hosea Nyandika Mosegwa & 2 Others =Versus= County Government of Nyamira (2021) eKLR and Willesden Investment Limited =Versus= Kenya Hotel Properties Limited HCCC No. 367 of 2000 were cited in support.
27. The Plaintiff also prayed for costs of the suit and interest.
28. The 2<sup>nd</sup> Defendant submitted a singular issue being whether the 2<sup>nd</sup> Defendant had acquired the suit land.
29. It was submitted that the process of compulsory acquisition is clearly outlined under part VIII of the Land Act, 2012 which was also applied in the case of Patrick Musimba (Supra).
30. It was submitted that the Plaintiff had failed to adduce evidence before this court to show that the 2<sup>nd</sup> Defendant had acquired the land. It was argued that no notice of intention to acquire the land had been issued, no notice of inquiries, no proof of inquiry proceedings before the Commission and no vesting order had been adduced in evidence. It was contended that in the instant case, the 2<sup>nd</sup> Defendant did not receive any instructions to acquire the land and as such they are not liable to pay under Section 111(1A) of the Land Act.
31. The 2<sup>nd</sup> Defendant concluded its submissions by urging the court to dismiss the Plaintiff's case against it with costs.

#### Analysis and Determination

32. This court having considered the evidence by the parties and submissions, the following issues arise for determination:-
  - i. Whether the Plaintiff's case against the Defendants has been proved to the required standard.
  - ii. Whether the Plaintiff is entitled to the reliefs sought.
33. The Plaintiff sought various reliefs as was enumerated in the plaint. It is trite law that It is trite law that he who alleges must prove. This is set out under Section 107(1)(2) of the Evidence Act, which provides as follows:
  - “(1) Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.



- (2) When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.”

Sections 109 and 112 of the same Act states;

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“109. The burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.

“112. In civil proceedings, when any fact is especially within the knowledge of any party to those proceedings, the burden of proving or disproving that fact is upon him.”

34. The Plaintiff’s case was that it is the registered proprietor of all that parcel of land known as LR 209/136/258 situated along Kirinyaga Road adjacent to globe round about. On or about 3<sup>rd</sup> September 2018 around 4am the 1<sup>st</sup> Defendant invaded the suit premises heavily guarded by personnel from the administration police and the National Youth Service and demolished the entire perimeter wall subsequently causing damage to the property and exposed it to looters. No notice or reasons for the said illegal acts had been offered to the and neither was it given an opportunity to be heard.
35. Sometimes in April 2020, the 1<sup>st</sup> and the 3<sup>rd</sup> Defendants further encroached on the suit premises and compulsorily acquired a part of the suit premises measuring approximately 0.006 Hectares. After the said encroachment, it contacted Wamae Muriithi & Associates to conduct a valuation of the entire suit property owning to the fact that the parcel of land left behind was not economically viable as the Plaintiff could not up any economic development as intended. The property was inspected on 13<sup>th</sup> November 2020 and the Valuer delivered the valuation report dated 13<sup>th</sup> November 2020 which assessed the property value at Kshs. 190,050,000/=.
36. The evidence before court shows that indeed the 1<sup>st</sup> Defendant invaded the suit premises heavily guarded by personnel from the administration police and the National Youth Service and demolished the entire perimeter wall subsequently causing damage to property exposed to looting. There was no notice issued by the 1<sup>st</sup> Defendant nor were there any reasons relayed to the Plaintiff concerning the actions of the 1<sup>st</sup> Defendant. The Plaintiff was also denied an opportunity to be heard with regard to the actions of the 1<sup>st</sup> Defendant.
37. It was also evident that the Plaintiff is the registered proprietor of the suit property.
38. In respect to the aspect of compulsorily acquisition of the land, it is clear that the process of compulsory acquisition is outlined as follows in the *Land Act*, 2012. The process is commenced by the issuance of instructions by either the National or County Governments to the Commission to acquire land on their behalf for a public purpose or interest. The Commission then publishes a notice of intention to acquire in the Kenya Gazette notifying every interested party of the government’s intention to acquire the land. The Commission follows this up by publishing a notice of inquiries in the Kenya Gazette inviting all interested parties to attend inquiries where they will then make their claims regarding the suit land. The notice notifies the interested parties of the place, date and time when the inquiries will be conducted. The inquiries are held at the specified date, place and time and are attended by the interested parties who make their claims regarding the suit land before the Commission.

On completion of the inquiries, the Commission prepares and offers an award of compensation to the affected parties in accordance with the provisions of Section 113 of the *Land Act*.



39. Where the award is accepted the Commission is required to promptly pay it and where it is not, payment is made into a special compensation account held by the Commission. The process concludes with the Commission taking possession of the land on behalf of the government after which the land is said to be vested in either the national or county government as the case may be.
40. From the analysis of the evidence that was tendered in court the Plaintiff failed to demonstrate if at all there was compliance to the above. There was no evidence to show that the 2<sup>nd</sup> Defendant acquired or was involved in the acquisition of the suit land. There was no notice of inquiries, there was no proof of inquiry proceeding before the Commission, no award of compensation from the National Land Commission and no evidence of any vesting order. There was also no evidence that National Land Commission had indeed received instructions to acquire the land.
41. In view of the foregoing, it is the finding of this court that the Plaintiff's case has only been successfully proved as against the 1<sup>st</sup> and 3<sup>rd</sup> Defendants and the same fails as against the 2<sup>nd</sup> Defendant.
42. Article 40 of *the Constitution* of Kenya, 2010, elaborates on the right to own property in Kenya. It provides as follows; -
- “(1) Subject to Article 65, every person has the right, either individually or in association with others, to acquire and own property—
43. In respect to the reliefs sought, this court having found that the Plaintiff's case has been proved as against the 1<sup>st</sup> and 3<sup>rd</sup> Defendants it is the finding of this court that the same are for granting.
44. In respect to the claim of special damages sought of Kshs. 1,295,000/= the Plaintiff was able to produce a valuation report which confirmed the cost of the destruction and as such the same shall be granted by this court.
45. In respect to general damages for trespass, trespass was pleaded and particularised and further as earlier stated the court is satisfied that the Plaintiff was able to prove the trespass as against the 1<sup>st</sup> and 3<sup>rd</sup> Defendants. The plaintiff submitted and urged the court to award a figure of Ksh 1,500,000 as general damages for trespass.

General damages are awarded as recognition of an infringement of a legal right or duty. In the case of *Mwihaki vs Safaricom PLC (Formerly Known As Safaricom Limited)* (Environment & Land Case E165 Of 2021) [2023] KEELC 19802 (KLR) (30 August 2023) (Judgment) which had similar issues in respect to the instant case, the Learned Judge awarded Kshs.1,000,000/= for general damages for trespass. Considering all the circumstances of this case this court shall proceed to award general damages in the sum of Kshs. 1,000,000/= as a result of the 1<sup>st</sup> and 3<sup>rd</sup> Defendants act of trespass.

#### Final orders

46. Having found that the Plaintiff's case has been successfully proved as against the 1<sup>st</sup> and 3<sup>rd</sup> Defendants and further considering that the 3<sup>rd</sup> Defendant is no longer in existence after its functions were reverted back to the 1<sup>st</sup> Defendant, it follows that the Plaintiff's suit partially succeeds in the following terms: -
- a. A permanent injunction be and is hereby issued restraining the 1<sup>st</sup> Defendant, its agents, assigns or any other person claiming under its behest from trespassing, demolishing or otherwise interfering with the Plaintiff's quiet possession of L.R No. 209/136/258.
  - b. Special damages of Kshs. 1, 295,000/= is hereby awarded to the Plaintiff.
  - c. General damages for trespass of Kshs. 1,000,000/= are hereby awarded to the Plaintiff.



- d. Costs of the suit payable by the 1<sup>st</sup> Defendant.
  - e. Interest at court rates on item (b) from the date of filing suit until its payment in full.
- Judgment accordingly.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT VOI THIS 18<sup>TH</sup> DAY OF FEBRUARY 2025.**

**E. K. WABWOTO**

**JUDGE**

In the presence of:-

Mr. Kamau holding brief for Mr. Thiongo for Plaintiff.

Mr. Ongoto for 1<sup>st</sup> Defendant.

No appearance for 2<sup>nd</sup> Defendant.

Court Assistants: Mary Ngoira.

