



**Ex Parte Khodiyar Limited v National Land Commission & another (Environment and Land Judicial Review Case E009 of 2023) [2024] KEELC 6994 (KLR) (17 October 2024) (Ruling)**

Neutral citation: [2024] KEELC 6994 (KLR)

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT NAIROBI**  
**ENVIRONMENT AND LAND JUDICIAL REVIEW CASE E009 OF 2023**  
**LN MBUGUA, J**  
**OCTOBER 17, 2024**

**BETWEEN**

**EX PARTE KHODIYAR LIMITED ..... EXPARTE APPLICANT**

**AND**

**THE NATIONAL LAND COMMISSION ..... 1<sup>ST</sup> RESPONDENT**

**KENYA RAILWAYS CORPORATION ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. Before me is the Notice of Preliminary Objection brought forth by the 2<sup>nd</sup> respondent dated 16<sup>th</sup> February, 2024. It is argued that this court has no requisite jurisdiction to adjudicate over this dispute by virtue of the provisions of Section 112 and 133 C of the *Land Act*, 2012. It is averred that the issues raised therein ought to be dealt with by the Land Acquisition Tribunal in the first instance, and should only be brought before this court by way of appeal. Therefore, this suit is premature and is an abuse of the court process.
2. In their submissions dated 19<sup>th</sup> April 2024, the 2<sup>nd</sup> respondent reiterates that the Land Acquisition Tribunal is the first dispute resolution mechanism as established by the law. To this end, the second respondent has relied on several authorities including; Royal Reserve Management Company Limited v Kenya Power and Lighting Company Limited [2017] eKLR, Kibos Distillers Limited and Four Others v Benson Ambuti Adega and Three Others [2020] eKLR and Samuel Kamau Macharia and Another v Kenya Commercial Bank Limited and Two Others, [2012] eKLR.
3. The expert applicant opposes the preliminary objection vide the replying affidavit of PJ Kakad, who is its Managing Director dated 19<sup>th</sup> April 2024. He contends that this court has jurisdiction to deal with land and environment matters as bestowed by *the Constitution* at Article 162 and Section 13 of the *Environment and Land Court Act*. To this end, the expert applicant has brought forth the judicial



review proceedings touching on enforcement of its rights and freedoms under Article 23 and 40 of the Constitution.

4. In support of their arguments, the expert applicant relies on the case of Ken Kasinga v Daniel Kiplagat Kirui and Five Others, [2015] eKLR, West Kenya Sugar Company Limited v Busia Sugar Industries Limited and Two Others [2017] eKLR and SCOK Petition E 007 of 2023 Abidha Nicholus v the Attorney General and Seven Others and the National Environmental Complaints Committee and Five Others Interested Parties.
5. The 1<sup>st</sup> respondent did not file a response.
6. I have considered the arguments raised herein. The issue falling for determination is whether this court has jurisdiction to determine the matter at hand. The nature of the complaint by the exparte applicant is that it is the registered owner of parcel L.R.20281. That vide several gazette notices, the 1<sup>st</sup> respondent published its intention to acquire part of the said land to the tune of 0.004 hectares for the construction of the standard gauge railway. Eventually, the land to be acquired was valued where the exparte applicant was awarded ksh. 39 000 000. Still in another gazette notices, the 1<sup>st</sup> respondent published its intention to acquire 0.027 hectares of the same land, of which an award was given for ksh. 38 500 000. And still in another acquisition, the exparte applicant was awarded ksh.1,564,000. The exparte applicant contends that despite these awards, they have not been paid.
7. The 2<sup>nd</sup> respondent contends that the body with the mandate to hear the matters is the Land Acquisition Tribunal which is established under Section 133A of the Land Act. The mandate of the tribunal is set out at Section 133C, whereby at Sub Section 6 - 8 it is provided as follows;
  - “ 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.....”
8. It is important that such bodies as the Land Acquisition Tribunal be given leeway to discharge their mandate bestowed upon them by the Constitution and the statutes- See Republic v Chairman, National Land Commission & 2 Others Ex-parte Peter Njore Wakaba & Macharia Kinyanhui [2016] eKLR. This far, I am in agreement with the proposition advanced by the 2<sup>nd</sup> respondent on the need to invoke the available dispute resolution mechanisms set out in the applicable statutes in the event of a dispute. The cited authorities also support the doctrine of exhaustion of remedies.
9. I however pose the question; What is the dispute capable of being tabled before and to be resolved by the tribunal? None!. After all, the respondents do not seem to dispute the award, and the exparte applicant is not challenging the said award. It follows that the matter is in the enforcement arena, thus this court is the one with the requisite mandate to enforce the award. To this end, the exparte applicant is within the applicable law to invoke the provisions of Article 23 and 40 of the Constitution seeking redress.



10. In Republic v National Land Commission Ex-parte Krystalline Salt Limited [2015] eKLR, it was stated that;

“Judicial review is available where a public body or tribunal has acted illegally, unreasonably or failed to comply with the rules of natural justice.”

11. And in the case at hand, all that the applicant wants is for the award to be effectuated. Enforcement of awards against government bodies is generally undertaken through the route of Judicial review proceedings. To this end, I make reference to the case of Republic v Permanent Secretary Ministry of State for Provincial Administration and Internal Security (2012) eKLR where it was stated that;

“When a judgment has been entered against the government and a monetary decree is issued against it, it does not enjoy any special privileges with regards to its liability to pay except when it comes to the mode of execution of the decree. Unlike in other civil proceedings, where decrees for the payment of money or costs had been issued against the Government in favour of a litigant, the said decree can only be enforced by way of an order of mandamus compelling the accounting officer in the relevant ministry to pay the decretal amount as the Government is protected and given immunity from execution and attachment of its property/goods under Section 21(4) of the *Government Proceedings Act*.”

12. It follows that these execution proceedings are in the right forum. Therefore, in the end, I find that the Preliminary Objection is not merited, the same is hereby dismissed with costs to the exparte applicant.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 17<sup>th</sup> DAY OF OCTOBER 2024 THROUGH MICROSOFT TEAMS.**

**LUCY N. MBUGUA**

**JUDGE**

In the presence of:

Anyango Opiyo for Exparte Applicant

Masinde for 1<sup>st</sup> Respondent

Samini for 2<sup>nd</sup> Respondent

Court Assistant: Joan

