



**Mbaraka & 8 others v Kenya Electricity Transmission Company Limited & 2 others;
Governor, County Government of Tana River & another (Interested Parties) (Environment
& Land Petition 9 of 2021) [2024] KEELC 13496 (KLR) (27 November 2024) (Ruling)**

Neutral citation: [2024] KEELC 13496 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT & LAND PETITION 9 OF 2021
FM NJOROGE, J
NOVEMBER 27, 2024**

BETWEEN

SAID BUYA MBARAKA & 8 OTHERS PETITIONER

AND

**KENYA ELECTRICITY TRANSMISSION COMPANY LIMITED 1ST
RESPONDENT**

NATIONAL LAND COMMISSION 2ND RESPONDENT

COUNTY GOVERNMENT OF TANA RIVER 3RD RESPONDENT

AND

**THE GOVERNOR, COUNTY GOVERNMENT OF TANA
RIVER INTERESTED PARTY**

ABDI MOGO INTERESTED PARTY

RULING

1. For consideration is the 1st Respondent’s application dated 29th February 2024 which seeks the following orders: -
 1. That pursuant to the order of this honourable court dated 14th March 2023, the firm of M/ S Jamal Bake & Associates Advocates, do present before this court a comprehensive financial report for scrutiny on the sum of Kshs. 102, 836, 797.00, being compensation funds meant for the residents of the county of Tana River, duly paid to the firm by the 1st Respondent/ applicant, and the said report do give an account of the compensation funds received, the status of the same, the structure/modalities of payment and disbursements of the monies plus



interest accrued to the affected persons/communities, and the said firm keep this honourable court abreast on any matter appertaining to the compensation funds up to payment.

2. That upon presentation and scrutiny of the comprehensive financial report by the firm of M/ S Jamal Bake & Associates Advocates, in the event the court finds that the compensation funds have been unlawfully appropriated, this honourable court make such orders to compel the firm to reimburse the 1st Respondent/applicant, the unlawfully appropriated funds within 30 days for compensation to the appropriate project affected persons.
 3. Any other orders the honourable court may deem fit to grant in the interest of justice.
 4. Costs of this application be in the cause.
2. The application was supported by the affidavit of Lydia Wanja sworn on 29th February 2024. She deposed that following a consent dated 27th July 2021, the 1st Respondent was to deposit the sum of Kshs. 171, 394, 662. 71 into the Petitioners' advocates' account for the compensation of limited loss of land use. The 1st Respondent subsequently deposited the sum of Kshs. 102, 836, 797.00 in part compliance with the consent order; that on 14th March 2023, and following an application filed by the 1st Interested Party, the court ordered that any monies arising out of such compensation be deposited in a special interest earning account to be held by the 3rd Respondent. The court also ordered parties to regularize and account for the monies already released to the advocate for the communities and the balance due be paid into the special interest earning account. According to Lydia therefore, it is mandatory that the reliefs sought herein are granted, in compliance with the said orders and to ensure that public funds are accounted for.
 3. The application was not responded to within the timelines fixed by the court. Similarly, the 1st Respondent, applicant herein, failed to file written submissions within 28 days as directed.
 4. Considering the circumstances of this case and within the discretion of this court, I hereby grant prayer no 1 of the application dated 29/2/2024. As prayer no 2 is quite presumptuous and it is not for the court to unilaterally conduct the audit of the monies but the parties who are urging their respective cases, that prayer is hereby declined. The costs of the application shall be in the cause. The concerned parties shall file submissions, the applicant within 30 days and the respondents within the 30 days following. The Notice of Motion dated 22/4/2024 shall be mentioned on 21/1/2025 for issuance of a ruling date.

RULING DATED, SIGNED AND DELIVERED AT MALINDI VIA ELECTRONIC MAIL ON THIS 27TH DAY OF NOVEMBER, 2024.

MWANGI NJOROGE

JUDGE, ELC, MALINDI

