



**Kericho Mwalimu Enterprises Limited v National Land Commission & 3 others
(Constitutional Petition 2 of 2019) [2023] KEELC 410 (KLR) (26 January 2023) (Judgment)**

Neutral citation: [2023] KEELC 410 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KERICHO

CONSTITUTIONAL PETITION 2 OF 2019

MC OUNDO, J

JANUARY 26, 2023

IN THE MATTER OF THE CONSTITUTION OF THE REPUBLIC OF KENYA

IN THE MATTER OF ARTICLES 1,2,3, 19(2), 20(5), 21, 22, 23, 26, 27,

28, 29, 40 AND 47 OF THE CONSTITUTION OF KENYA 2010 AND IN

THE MATTER OF THE ALLEGED CONTRAVENTION OF ARTICLES 1, 2 3

AND 19 OF THE CONSTITUTION

IN THE MATTER OF THE LAND ACT, 2012

BETWEEN

BETWEEN

KERICHO MWALIMU ENTERPRISES LIMITED PETITIONER

AND

NATIONAL LAND COMMISSION 1ST RESPONDENT

THE COUNTY GOVERNMENT OF KERICHO 2ND RESPONDENT

THE LAND REGISTRAR, KERICHO 3RD RESPONDENT

THE ATTORNEY GENERAL 4TH RESPONDENT

JUDGMENT

1. Vide their Petition dated the 20th March 2019 and filed on 21st March 2019, the Petitioners herein seek for the following;

- i. A declaration that the Constitutional rights of Kericho Mwalimu Enterprises Limited of Right to Property, Protection from discrimination, Right to fair protection of the law, Protection



from Inhuman Treatment and Right to Human Dignity, Right to Fair Administrative action and Right to Fair Trial were violated by the Respondents.

- ii. A Declaration that the 2nd Respondent did not follow the right procedure when issuing out approvals for construction of any buildings on the parcel of land registered as L.R No. 631/1353 located within Kericho municipality and for that reason the same be cancelled.
 - iii. A Declaration that Kericho Mwalimu Enterprises Limited are entitled to the prompt payment in full of (sic) just compensation for;
 - a. Deprivation of their property; and
 - b. Infringement of their Constitutional rights.
 - iv. A Declaration that the following actions of the Respondents, their agents, servants and any and all other officers acting under their instructions were unConstitutional, unlawful, null and void;
 - a. Purporting to terminate lease agreement dated 20th May 1994 with respect to land registered as L.R No. 631/1353 within Kericho municipality; and
 - v. A declaration that the 1st, 2nd, and 3rd Respondents have violated the Petitioner's right to equal benefit of law under Article 27 of *the Constitution*; right to fair administrative action under Article 47 of *the Constitution*, right to a fair hearing under Article 50 of *the Constitution* and the right to access justice under Article 48 of *the Constitution*.
 - vi. An order for judicial review to quash any decision of the 1st, 2nd or 3rd Respondents made pursuant to flawed, biased and unreasonable investigations and/or recommendations of the 2nd Respondent.
 - vii. An order of eviction against all the illegal immigrants on the land registered as LR No. 631/1353 and the Officer in charge Kericho Police station to assist in compliance of the same and ensure that the Petitioners take possession of the same.
 - viii. An award of general damages for pain and suffering, humiliation and distress visited upon the Petitioners.
 - ix. Costs of this Petition.
 - x. In the alternative to prayers a-h above, this Honorable court be pleased to order a refund for amount paid as purchase price being Kenya Shillings Three hundred thousand shillings (Kshs, 300,000.00/=) together with interest from 1st December, 1990.
 - xi. Compensation for the land registered as L.R. No. 631/1353 by the Respondents as per the current market rate.
 - xii. Interest on (ix) above.
 - xiii. General damages for breach of contract by the 1st Respondent.
 - xiv. Any other or further relief that this Honorable court considers appropriate and just to grant.
2. Alongside the said Petition, the Petitioners filed a Notice of motion seeking orders directing the Land Registrar to visit the suit land LR No. 631/1353 with the Officer in charge Kericho Police station as security, and thereafter file a report on its status, and to avail the file and Registry Index Map so as



to aid in the hearing of the Petition. The said application was dismissed vide a ruling dated the 21st January 2020.

3. The Petitioner's Petition, was supported by the Affidavits sworn by Richard Langat and Joshua Talaam, to the effect that the Petitioner was a Company registered in Kenya as per the [Companies Act](#) and brings this Petition on their own behalf and on behalf of all its members. That they bought land on a ninety nine (99) year lease term wherein they had been issued with a title deed in respect to the parcel L.R No. 631/1353 within Kericho Municipality. That even before the lease had been granted, they were already in occupation.
4. That over the time, the Respondents had by themselves or through their agents aided encroachment on the said parcel of land because during day and night, there had been several buildings built thereon by strangers who were not known to the Petitioners.
5. That according to the lease agreement, for any buildings to be erected on the said suit land, additions or external alterations or otherwise, the same ought to have been in conformity with the plans and specifications approved in writing by the commissioner of lands and the local authority.
6. That the Petitioners had not applied and/or consented to the construction of the buildings and/or people residing on the said parcel of the land and therefore they believed that the said construction of the building was with the authority and/or consent of the Respondents.
7. That the Respondents had therefore breached the Petitioner's right to own property despite having purchased the same. That the Petitioner and its' members were never consulted during the demarcation, sub-division and issuance of the titles (if any) and/or any approvals. That the Petitioners and its' members were also never given an opportunity to be heard before any approvals and/or sub-divisions could be done by the Respondents and/or their agents for any buildings to be erected on the said land.
8. That the Petitioner's lease is still existing but the Respondents have made it difficult through their actions for them to enjoy quiet possession of the said land which action was unfair, unlawful and aimed at depriving the Petitioners' its respective portions of land as earlier agreed.
9. That the Respondents had failed, since 1994, to make good the Petitioner's claim and/or refund all the monies paid to them with respect to the aforementioned parcel of land and the lease thereunder. That the conduct of the Respondents had therefore grossly violated the Petitioner's rights under Articles 27, 28, 29(c) & (f), 40, 47, 48 and 159(2)(a) & (b) of [the Constitution](#) which violation was likely to continue unabated unless the court intervened.
10. The 3rd and 4th Respondents entered appearance through their Memorandum of Appearance dated 1st April 2019 but filed no response to the Petition while the 2nd Respondent filed their Notice of preliminary Objection and Replying Affidavit both dated the 3rd May 2019.
11. The 2nd Respondent's opposition to the Petition was based on their disposition that the Petition as drawn and filed was fatally and incurably defective for want of substance and compliance with the relevant rules of procedure and should be dismissed in limine with costs. That the same did not disclose any cause of action against the 2nd Respondent but instead the Petitioner had embarked on a fishing expedition whilst making wild and unsubstantiated allegations which had no evidentiary backing. That further, the Petition as drawn and filed proceeded on an incurable misconception that the encroachment of squatters on a parcel of land was the responsibility of the 2nd Respondent contrary to the provisions of the [Land Act](#), the [Land Registration Act](#), and [the Constitution](#) in so far as the ownership of the suit property was concerned.



12. In their Replying Affidavit, the Chief Officer in the Department of Lands, Housing and Physical Planning of the County Government of Kericho, deponed that they were strangers to all the allegations made by the Petitioner and specifically to the effect that the 2nd Respondent had a hand in the encroachment of the suit properties existing in Title No. LR. No. 631/1353 and that at no time had she been in contact with the Petitioner or any of its employees regarding the said allegations as no complaint had ever been brought to her attention regarding the alleged encroachment on the suit land.
13. That the Petitioner was attempting to resolve an alleged squatter problem on its premises by dragging the 2nd Respondent into this Petition yet it was trite law that it was the responsibility of a proprietor of a parcel of land to protect its own property from encroachment by 3rd parties.
14. That the alleged encroachers had neither been named nor joined to the Petition. That the proceedings herein as instituted by the Petitioner were an abuse of the Court's process since no cause of action had been established by the Petitioner as against the 2nd Respondent that would warrant the intervention of the Court. That the intention of the Petitioner was to lead the Court on a fishing expedition to determine who was responsible for the alleged encroachment of its properties by unknown 3rd parties. She sought that the Petition dated 20th March 2019 be dismissed with costs as it disclosed no cause of action as against the 2nd Respondent.
15. On the 14th July 2022, directions were issued to the effect that the Petition be disposed of by way of written submissions, wherein only the Petitioner complied which would mean in effect that the Petition was unopposed and therefore I shall have to determine it on its merit.

Petitioner's submissions.

16. The Petitioner framed its issues for determination as follows:
 - i. Whether there was a contract between the Petitioner and the 2nd Respondent?
 - ii. Whether the contract was breached?
 - iii. Whether the breach of contract if any, violated the Petitioner's right to property.
 - iv. Whether the Petitioner's right to fair administrative action, fair trial, equal protection of the law and freedom from discrimination have been violated?
 - v. Whether the Petitioner is entitled to damages for breach of contract?
 - vi. Whether the Petitioner is entitled to compensation for infringement of Constitutional rights?
 - vii. Whether the Petitioner is entitled to judicial review orders?
 - viii. Whether eviction orders should issue against the illegal immigrants?
 - ix. In the alternative, whether the Petitioner was entitled to compensation of the land at the current market rates.
 - x. Who should bear the costs of the Petition?
17. On the first issue for determination, the Petitioner submitted that having annexed a copy of the Lease agreement together with the deed plan marked as RLJT 1a-b and the search certificate as RLJT 2, it



could be affirmed that they had established the existence of a lease agreement which had been breached by the Respondents in which it had stipulated under special conditions in clause 1 as:

“No buildings shall be erected on the land nor shall additions or external alterations be made to any buildings otherwise than in conformity with plans and specifications previously approved in writing by the commissioner of lands and the local authority. The commissioner shall not give his approval unless he is satisfied that the proposals are such to develop the land adequately and satisfactorily.”

18. That this condition had been breached as there had been a mushrooming of buildings on the suit land which could not be done without the approval of the Respondents. Reliance was placed on a valuation report dated 22nd February 2020 attached to its supplementary affidavit dated 12th July 2022 and marked as RLJT 1 which report had confirmed verbatim that there were indeed illegal encroachers on the said land, and that the said invasion had negatively impacted on the value of the said land because squatters tended to scare away potential buyers. The report further stated that “the encroachers had proceeded to cultivate, planted trees, put up fencing and constructing several temporary structures which they occupy with their families making the place look like an informal settlement...” That this report was not rebutted by the Respondents.
19. That since the Petitioner had neither applied for or consented to the construction of the buildings and/or people residing on the said parcel, they had all the reasons to believe that the said buildings and/or people living on the said land were doing so with the authority and/or full knowledge and/or consent of the Respondents who had breached the Petitioner’s right to own property after they had parted with Ksh. 300,000/= as the purchase price.
20. That the Petitioner was neither consulted during the demarcation, sub-division and issuance of titles, if any, and neither had it been given an opportunity to be heard before any approvals and/or subdivisions could be done by the Respondents and agents for any buildings to be erected on the said land. Reliance was placed on the holding by the Supreme Court in Civil Petition No. 1 of 2020. Attorney General vs. Zinj Limited where it had been held that a breach of a lease agreement was a violation of the right to property.
21. On the second issue for determination, the Petitioner submitted that they had proved that there had been a breach of a contract by the Respondents through the issuance of illegal approvals to the encroachers on the said suit land wherein their property had been negatively impacted as its value had diminished as was stated in the valuation report dated 22nd February 2022. That
22. On the third issue for determination, the Petitioner submitted that indeed the right to fair administrative action, fair trial, equal protection of the law and freedom from discrimination had been violated as the government had condoned the encroachment upon of its land by third parties by issuing land approvals for construction in the said land without consulting the Petitioners and without giving them an opportunity to be heard. There was no consultation either during the demarcation, sub-division and issuance of titles, if any, which was in contravention of Article 47 of *the Constitution* which guarantees every person the right to fair administrative action that is expeditious, efficient, lawful, reasonable and procedural.
23. That the provisions of Article 50 of *the Constitution* accord every person the right to have any dispute that can be resolved by the application of law, decided in a fair and public hearing before a court or an independent and impartial tribunal or body. The Petitioner herein was never given an opportunity to be heard before the issuance of the approvals thereby violating its right to fair hearing and access to justice. That it was trite that where a public authority’s action was likely to deprive individuals of



- their fundamental rights and freedoms, it would be crucial that such actions be carried out through due process and in respect to the rules of natural justice. Reliance was placed in Milimani High Court, Petition No. 88 of 2010, Multiple Hauliers East Africa Limited vs Attorney General & 10 others where the court had held that the right to fair administrative action had been violated by the failure to involve the Petitioner in the acquisition of its land.
24. In regard to the fourth issue as to whether the Petitioner was entitled to damages for breach of contract, the submission was in affirmative reliance being placed on the Zinj Limited case (supra) where the Learned Justices had held that an injury or loss suffered by a person through a tortious act or breach of contract would attract a remedy in a court of law. That the court had proceeded to award general damages to a tune of Kshs. 51,129,000/=. The Petitioner then went ahead to quote decisions in the Lesotho case in Mosisili vs. Editor Mirror Newspaper and Others Case No. CIV/T/275/2001 quoted authoritatively in Eldoret ELC Case No. 112 of 2016, National Land Commission vs. Estate of Sisiwa Arap Malakwen & Another to submit that taking into consideration the value of the property as portrayed by the valuation report dated the 22nd February 2020, which had put the value of the suit land at Kshs. 65,000,000/= that an award of Kshs. 5,000,000/= as general damages would be sufficient in the circumstances.
 25. On the fifth issue for determination as to whether the Petitioner was entitled to compensation for infringement of its Constitutional rights, the submission was also in the affirmative. That the Petitioner had proved that his rights to property, the rights to fair administrative action, right to fair trial access to justice, equal protection of the law and protection from discrimination had been infringed. Reliance was placed on the provisions in Article 23 of *the Constitution* which stipulated that a court may grant appropriate reliefs inclusive an order for compensation. That illegal invasion alone was a basis for compensation. Further reliance was placed in the case in Kitale ELC Petition No. 2 of 2020 Wilfred Juma Wasike & 11 Others vs Ministry of Interior and Co-ordination & Another, Zinj Limited (supra), amongst others in support of their submission.
 26. As to whether the Petitioner was entitled to judicial review orders, the submission in support was pegged on the provision of Article 23(3)(f) of *the Constitution* and the decision in Keroche Industries Limited vs. Kenya Revenue Authority & 5 Others (sic) to submit that having proved that the Respondent had issued illegal approvals to the ‘migrants’ despite being aware of the ownership of the said property, that the entire conduct of the Respondents should be quashed.
 27. The Petitioner then sought that an order of eviction do issue to the so called illegal migrants having proved that it was the legal owner of the said parcel, while the said encroachers were trespassers. Reliance was placed in Kericho ELC Case No. 31 of 2013 Joseph Kipchirchir Koech vs Philip Cheruiyot Sang.
 28. Last but not least, the Petitioner submitted that in the alternative, were the Respondents desirous to acquire the suit land, it would be just and reasonable to compensate it at the current market rate of Kshs. 65,000,000/ (Sixty-Five Million shillings) as per the valuation report dated the 22nd February 2020. That courts had over the time held that in instances where the Government arbitrarily acquired a land and reclaiming the same was not viable, then the Government would be ordered to pay compensation of the land at current market rates basing on a valuation report. Reference was made to the zinj limited case (supra) and Eldoret ELC Case No. 112 of 2016 (supra). Finally, the Petitioner sought for costs of the Petition as set out under Section 27(1) of the *Civil Procedure Act*.



Determination.

29. I have considered the contents of the Petitioner's Petition, its Affidavit in support, as well as arguments and the authorities herein cited. The Petitioner brings this Petition alleging violation of its right to own property in terms of Article 40 of *the Constitution*, the right to fair administrative action under Article 47 of *the Constitution*, right to a fair hearing under Article 50 of *the Constitution* and the right to access justice under Article 48 of *the Constitution*.
30. I also wish to distinguish the present case with the cited case in Attorney General v Zinj Limited [2021] eKLR in that whereas the Petitioner in this matter seeks a determination on the alleged contravention of its Constitutional rights, the matter in the citation herein above, which was before the Supreme Court, was one where the Applicant had sought among others, that the court directs that additional evidence be taken by the trial court to establish the level and extent of the continuing encroachment of the suit property. I think the matter that Counsel had in mind was the one reported as Attorney General v Zinj Limited (Petition 1 of 2020) [2021] KESC 23 (KLR) (Civ) (3 December 2021) (Judgment) and which case is still distinguishable to this case in that in that case, the Appellant was aggrieved by the Respondent's act of issuing duplicate title deeds over land already forming part of his land while setting up Ngomeni Settlement Scheme. The said Petition was based on the facts that a Government could not allot or in any way alienate land which had already been allocated to another person.
31. The present Petition, which was unopposed stems from an allegation by the Petitioner that being previously in occupation of the suit land herein which was within Kericho Municipality, they had subsequently bought the same on a ninety nine (99) year lease term wherein they had been issued with a title deed thereto to wit L.R No. 631/1353.
32. That subsequently over a period of time, the Respondents had by themselves or through their agents aided an encroachment on the said parcel of land because during day and night, there had been several buildings built thereon by strangers who were not known to the Petitioners.
33. It was the Petitioner's belief thereof that the since it had neither applied for or consented to the construction of the buildings and/or people residing on the said parcel, that the construction of said buildings and/or the people living thereon was done with the authority and/or full knowledge and/or consent of the Respondents which was in breach of its right to own property which was contrary to the provisions of Article 40 of *the Constitution*. That the Petitioner was neither consulted during the demarcation, sub-division and issuance of titles (if any) nor given an opportunity to be heard before any approvals and/or subdivisions was done by the Respondents and its agents before any buildings to be erected on the said land. That to this effect, the Respondents had contravened the Petitioner's right to fair administrative action that was expeditious, efficient, lawful, reasonable and procedural as is stipulated under Article 47 of *the Constitution*.
34. That as a result of the Respondents' action of issuing illegal approvals to the encroachers on the said land, the Petitioner's property had been negatively impacted as its value diminished as evidenced in the valuation report dated 22nd February 2022.
35. That the Petitioner was never given an opportunity to be heard before the issuance of the approvals to the third parties thereby violating its right to fair hearing and access to justice which was contrary to the provisions of Article 50 of *the Constitution* more so now that the Government's action deprived it of its land.
36. The Petitioner's conclusion was that since it was the legitimate and rightful owner of the land parcel LR 631/1353, the actions of the Respondents in aiding the encroachment of the impugned parcel



were not just unlawful, but also flew in the face of the Constitutional provisions on the Bill of Rights. That for the protection of its right to property and in compliance of the Constitutional provisions, that the court should grant it the orders as sought inclusive of the award of compensatory relief of Kshs. 5,000,000/= and an award of general damages for breach of contract at Kshs. 5,000,000/= or in the alternative, a value of Kshs 65,000,000/= as compensation of the parcel of land at the current market rate. That the costs of the Petition to be borne by the Respondents.

37. From the aforesaid narration, I find the issues for determination herein as being;
- i. Whether or not the Petitioner proved its case to the required standard
 - ii. Whether Petitioner's rights under *the Constitution* were violated by the Respondents and what remedies if any are available to it.
38. It was held in Republic vs Senior Registrar of Titles Ex-parte Brookside Court Limited (2012) eKLR, that the statutorily, the sanctity of title to land is assured and protected under Sections 24, 25 and 26 of the *Land Registration Act*. From the above provisions of the law, and the fact that the Petitioner had proved through evidence of a title deed to land parcel L.R No. 631/1353 that it was the registered proprietor of said parcel of land herein, I find that it had disclosed a legal interest capable of protection under the law and therefore it ought not to be deprived of its land by the State or any public authority against its wish unless expressly authorized by law and public interest which decisively demands so, and with compensation.
39. The Petitioner's case is that by the Respondents issuing illegal approvals to third parties who had then invaded its land and put up structures thereto, the Respondents had clearly violated the right of the Petitioner to property as enshrined under Article 40 of *the Constitution*.
40. The provisions of Article 40 of *the Constitution* provide as follows;
- (1) Subject to Article 65, every person has the right, either individually or in association with others, to acquire and own property—
 - (a) of any description; and
 - (b) in any part of Kenya.
 - (2) Parliament shall not enact a law that permits the State or any person—
 - (a) to arbitrarily deprive a person of property of any description or of any interest in, or right over, any property of any description; or
 - (b) to limit, or in any way restrict the enjoyment of any right under this Article on the basis of any of the grounds specified or contemplated in Article 27(4).
 - (3) The State shall not deprive a person of property of any description, or of any interest in, or right over, property of any description, unless the deprivation—
 - (a) results from an acquisition of land or an interest in land or a conversion of an interest in land, or title to land, in accordance with Chapter Five; or
 - (b) is for a public purpose or in the public interest and is carried out in accordance with this Constitution and any Act of Parliament that—
 - (i) requires prompt payment in full, of just compensation to the person; and



- (ii) allows any person who has an interest in, or right over, that property a right of access to a court of law.
- (4) Provision may be made for compensation to be paid to occupants in good faith of land acquired under clause (3) who may not hold title to the land.
- (5) The State shall support, promote and protect the intellectual property rights of the people of Kenya.
- (6) The rights under this Article do not extend to any property that has been found to have been unlawfully acquired.
41. Article 40(1) of *the Constitution* sets out the general right of every Kenyan to acquire and own property. There is no evidence adduced by the Petitioner that it had been denied the right, either individually or in association with others to acquire or own property of any description in Kenya. Indeed the Petitioner's case was a confirmation of having acquired the suit land wherein a title deed had been issued.
42. Article 40(2) limits the authority of Parliament to pass certain types of legislation affecting property. First, legislation that deprives a person of property arbitrarily and second, legislation that restricts enjoyment of any right to property in a manner that is discriminatory in terms of Article 27(4) of *the Constitution*. The Petitioner did not complain of any such breach.
43. Article 40(3) and (4) deal with the deprivation of property by the state on terms specified, that is, for a public purpose or in the public interest and upon payment of compensation. The Petitioner's complaint is that the state had compulsorily deprived it of its land by issuing approval plans to third parties who had then invaded the land by putting up structures which in turn had resulted in the diminution of the value of the suit property. It is worth noting that apart from the allegations made by the Petitioner, there was no iota of documentary evidence produced to confirm either these allegations, that the Respondents had a hand in the encroachment of the suit properties, had issued titles and/or allotment letters to 3rd parties. It would have been easier to have joined the alleged 3rd parties and/or encroachers to the Petition to confirm or dispute the said allegations and/or to shed more lights on the Petitioner's allegation. Actually no evidence was brought forth that the Petitioner is dispossessed of his land and can no longer use it as an owner through the acts pointing irresistibly to the Respondents. Indeed the Petitioner had not proved any fault or liability arising from the Respondents' action which would require or justify awarding the prayers sought. The Petitioner's allegation therefore remains just as such, an allegation. The law on evidence in Sections 107, 108 and 109 of the *Evidence Act* is very clear to the effect that 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. The Petitioner did not discharge its mandate. I find that in the present circumstance, the Petitioner did not make out any case that its property was being acquired in the manner contemplated by Article 40 of *the Constitution*.
44. If indeed the Petitioner's claim was that the Government had compulsorily acquired its property, then I find that acquisition by the Government is ordinarily direct through a processes known to the Land Acquisition Act (now repealed) by the *Land Act*. The law governing compulsory acquisition is in Part VIII, Section 107 to 133 of the *Land Act* 2012.
45. The process of compulsory acquisition was laid down in the decided case of Patrick Musimba vs. National Land Commission & 4 others [2016] eKLR where the court held as follows;

“Under Section 107 of the *Land Act*, the National Land Commission (the 1st Respondent herein) is ordinarily prompted by the national or county government through the Cabinet



Secretary or County Executive member respectively. The land must be acquired for a public purpose or in public interest as dictated by Article 40(3) of *the Constitution*. In our view, the threshold must be met: the reason for the acquisition must not be remote or fanciful. The National Land Commission needs to be satisfied in these respects and this it can do by undertaking the necessary diligent inquiries including interviewing the body intending to acquire the property.

Under Sections 107 and 110 of the *Land Act*, the National Land Commission must then publish in the gazette a notice of the intention to acquire the land. The notice is also to be delivered to the Registrar as well as every person who appears to have an interest in the land.

As part of the National Land Commission's due diligence strategy, the National Land Commission must also ensure that the land to be acquired is authenticated by the survey department for the rather obvious reason that the owner be identified. In the course of such inquiries, the National Land Commission is also to inspect the land and do all things as may be necessary to ascertain whether the land is suitable for the intended purpose: see Section 108 of the *Land Act*.

The foregoing process constitutes the preliminary or pre-inquiry stage of the acquisition.

The burden at this stage is then cast upon the National Land Commission and as can be apparent from a methodical reading of Sections 107 through 110 of the *Land Act*, the landowner's role is limited to that of a distant bystander with substantial interest.

Section 112 of the *Land Act* then involves the landowner directly for purposes of determining proprietary interest and compensation. The section has an elaborate procedure with the National Land Commission enjoined to gazette an intended inquiry and the service of the notice of inquiry on every person attached. The inquiry hearing determines the persons interested and who are to be compensated. The National Land Commission exercises quasi-judicial powers at this stage.

On completion of the inquiry the National Land Commission makes a separate award of compensation for every person determined to be interested in the land and then offers compensation. The compensation may take either of the two forms prescribed. It could be a monetary award. It could also be land in lieu of the monetary award, if land of equivalent value, is available. Once the award is accepted, it must be promptly paid by the National Land Commission. Where it is not accepted then the payment is to be made into a special compensation account held by the National Land Commission: see Sections 113- 119 of the *Land Act*.

The process is completed by the possession of the land in question being taken by the National Land Commission once payment is made even though the possession may actually be taken before all the procedures are followed through and no compensation has been made. The property is then deemed to have vested in the National or County Government as the case may be with both the proprietor and the Land Registrar being duly notified: see Sections 120-122 of the *Land Act*.

If land is so acquired the just compensation is to be paid promptly in full to persons whose interests in land have been determined: See Section 111 of the *Land Act*. This is in line with the Constitutional requirement under Article 40(3) of *the Constitution* that no person shall be deprived of his property of any description unless the acquisition is for a public purpose and subjected to prompt payment in full of just compensation.



The Constitution dictates that acquisition be in accordance with the provisions of *the Constitution* itself and any Act of Parliament. *The Constitution* itself only provides for just compensation being made promptly.

The current procedure for acquisition of land by the State is as outlined above. As can be seen parliament took very seriously its Constitutional duty to legislate on the State's powers of deprivation or expropriation. Perhaps conscious of the emotive nature of land issues, the Legislature appeared scrupulous and contemplative.”

46. Without providing any evidence of any of the steps herein above cited having been taken by the Respondents, it cannot be said that the Government/Respondents had compulsorily acquired the Petitioner's land or were in the process of acquiring the same and therefore was in breach of the Contract signed between it and the Petitioner. What clearly comes out in the present situation, where no documentary or any evidence for that matter was adduced to confirm the Petitioner's allegation was put forward, is a scenario where squatters might have invaded the petitioner's land of which its recourse was not through the filing of a Petition.
47. Indeed the 3rd parties herein who are alleged to have invaded the Petitioner's land cannot be evicted without according them the same rights that the Petitioner seeks which is a right to fair administrative action under Article 47 of *the Constitution* and a right to a fair hearing under Article 50 of *the Constitution*. In my opinion, I find that the Petition lacks substantial evidence, is devoid of merit and is herein dismissed with no orders to costs.

DATED AND DELIVERED VIA TEAMS MICROSOFT AT KERICHO THIS 26TH DAY OF JANUARY 2022.

M.C. OUNDO

ENVIRONMENT & LAND – JUDGE

