



**Manjanje & 3 others (Suing in their own capacity and on behalf of Thogoto Ukai Self Help) v National Land Commission (Land Acquisition Petition E025 of 2024) [2024] KELAT 1209 (KLR) (29 August 2024) (Judgment)**

Neutral citation: [2024] KELAT 1209 (KLR)

**REPUBLIC OF KENYA  
IN THE LAND ACQUISITION TRIBUNAL  
LAND ACQUISITION PETITION E025 OF 2024  
NM ORINA, CHAIR & G SUPEYO, MEMBER  
AUGUST 29, 2024**

**BETWEEN**

**PROTUS INZIANI MANJANJE, PETER MUTHEE KIHUYU, PETER GATHII REUBEN AND PETER KENI KANUNA (SUING IN THEIR OWN CAPACITY AND ON BEHALF OF THOGOTO UKAI SELF HELP) ..... COMPLAINANT**

**AND**

**NATIONAL LAND COMMISSION ..... RESPONDENT**

**JUDGMENT**

**Background**

1. The Complainants have brought this suit on behalf of themselves and as officials of Thogoto Ukai Self-Help Group. The Complainants assert ownership over all that land known as L.R. No. 2256/8 (original number 2256/7/1) hereinafter, the suit property.
2. It is the Complainants' assertion that they have enjoyed peaceful and quiet enjoyment of the suit property since before independence. They aver that they were eventually formally allocated the suit property on 24<sup>th</sup> January 2014. During this period, the Complainants aver, they have been carrying out farming and residing on the suit property.
3. On what brings them before the Tribunal, the Complainants allege that the Government of Kenya compulsorily acquired a portion of the suit property measuring 2.8475 Acres (1.1524 Hectares) at an area known as Thirime for purposes of the construction of the Nairobi Southern By-Pass. This acquisition, the Complainants allege, was done without compensation despite demands for the same.
4. As a result of the said alleged compulsory acquisition, the Complainants claim compensation of the sum of Kshs. 306,500,000.00 broken down into: compensation for loss of land –



Kshs. 205,000,000.00; severance loss – Kshs. 61,500,000.00; and disturbance allowance – Kshs. 39,975,000.00.

5. The Complainants aver that the alleged actions of the Government of Kenya have violated their rights under Articles 35, 40(3), 47(2), and 67 of the Constitution. Consequently, the Complainants pray for the following reliefs:
  - a. A declaration that the Complainants' rights enshrined under Article 35, 40(3), and 47(1) of the Constitution of Kenya 2010, Fair Administrative Actions Act and Part VIII of the Land Act 2012 Section 111, 122 & 123 as amended in the Land Value (Amendment) Act 2019 have been contravened by the Respondents' (sic) action of taking over their land without compensation.
  - b. The Honourable Court to issue orders against the Respondents to compel them to accept the Complainants' valuation for purposes of effecting compensation for the acquired parcel of land.
  - c. A declaration that the Complainants are entitled to compensation for the commensurate value of the land acquired by the Respondents (sic) and compensation for loss of use of the suit land for a period of 10 years at a cost as set out in paragraph 10 translating to a grand total of Kshs. 306,500,000.00 or as the tribunal may please plus interest from 24<sup>th</sup> January 2014 until payment in full.
  - d. Costs of the suit.
  - e. Any other relief that this honourable court may deem just and fair to order.
6. The Complainants filed a witness statement of Peter Keni Kanuna dated 4<sup>th</sup> June 2024 and a bundle and list of documents of the same date in support of the Complaint.
7. The Respondent has opposed this suit through a Replying Affidavit sworn on 24<sup>th</sup> July 2024 by Doricah Buyaki – the Respondent's Acting Director of Valuation and Taxation.
8. In response, Ms. Buyaki avers that the said Nairobi Southern Road Project precedes the establishment of the Respondent who is a successor to the defunct office of the Commissioner of Lands. Nevertheless, Ms. Buyaki avers that acquisition of land for this project was done through gazette notice numbers 3788 and 3789 of 26<sup>th</sup> May 2006 which listed several properties earmarked for acquisition. According to Ms. Buyaki, the suit property was not among those earmarked for acquisition.
9. Subsequently, Ms. Buyaki states, a number of corrigenda and addenda to the said gazette notices were published in the years 2013, 2014, 2017 and 2019 but the suit property was not identified for purposes of acquisition by the Respondent or its predecessor.
10. It is Ms. Buyaki's assertion, therefore, that the suit property or a portion thereof was never acquired on behalf of any public body to warrant compensation.

### **Analysis and Determination**

11. When this matter was mentioned on 24<sup>th</sup> June 2024, parties mutually agreed to have the same disposed of by way of documentary evidence and submissions. The Complainants and the Respondent filed their submissions on 13<sup>th</sup> and 20<sup>th</sup> August 2024, respectively.
12. The Complainant presents the following issues for resolution by the Tribunal:
  - a. Whether the Government of Kenya is in occupation of a portion of the suit property known as L.R. No. 2256/8 measuring 2.8475 acres (1.1524 hectares) at an area known as Thirime;



- b. Whether a retrospective notice of intention to acquire and inquiry ought to be issued against the subject suit property;
  - c. Whether the Complainant's fundamental rights have been breached by the Respondent due to the manner in which the compulsory acquisition was undertaken;
  - d. Whether the Respondent should compensate the Complainants;
  - e. Who should bear costs of the suit.
13. On its part, the Respondent identifies two issues for determination:
- a. Jurisdiction of the Honourable Tribunal to entertain and determine the Complaint; and
  - b. Whether the orders sought by the Complainant can issue.
14. This case rests on the question whether the Complainants' portion of land was compulsorily acquired by the Government of Kenya without following the due process. A determination of that question will resolve other issues arising being whether the same amounts to a violation of the Complainants rights under [\*the constitution\*](#) and what remedies are available, if any.
15. However, the Respondent seeks to put breaks on the tribunal even before we move to determine the substantive questions identified. It is the Respondent's argument that the tribunal lacks jurisdiction to entertain this suit. It is the submission of the Respondent that there is no decision of the Commission that would trigger our jurisdiction under Section 133C of the [\*Land Act\*](#). In the alternative, the Respondent submits that the complaint is prematurely before the Tribunal, absent a decision.
16. With respect to counsel, this reading of Section 133C of the [\*Land Act\*](#) finds no support in logic. Section 133C of the [\*Land Act\*](#) provides as follows:

Jurisdiction of the Tribunal

1. The Tribunal has jurisdiction to hear and determine appeals from the decision of the Commission in matters relating to the process of compulsory acquisition of land.
2. A person dissatisfied with the decision of the Commission may, within thirty days, apply to the Tribunal in the prescribed manner.
3. Within sixty days after the filing of an application under this Part, the Tribunal shall hear and determine the application.
4. Despite subsection (3), the Tribunal may, for sufficient cause shown, extend the time prescribed for doing any act or taking any proceedings before it upon such terms and conditions, if any, as may appear just and expedient.
5. If, on an application to the Tribunal, the form or sum which in the opinion of the Tribunal ought to have been awarded as compensation is greater than the sum which the Commission did award, the Tribunal may direct that the Commission shall pay interest on the excess at the prescribed rate.
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 Act or any other law.
17. In the case of Tom Mwachiti Mwero (Suing as a representative of the Estate of Fredrick Johnson Mwachiti (Deceased) vs. Kenya Railways Corporation and National land Commission (TRLAP/E001/2023) this tribunal held as follows in regard to its jurisdiction especially under Section 133C (8):
- The language used in the *Land Act* is a “matter relating to” compulsory acquisition of land in relation to the Tribunal’s jurisdiction under Sections 133C (6) and (8). The Oxford Learner’s Dictionary (online edition) defines “related” as “connected with something.” This Tribunal’s jurisdiction, therefore, extends to any matter that is connected to the process of compulsory acquisition.<sup>1</sup>
18. The tribunal’s jurisdiction is not restricted to appeals arising out of the decision of the Respondent but the same extends to complaints arising out of any matter connected with compulsory acquisition of land. The Respondent’s objection to the tribunal’s jurisdiction is, therefore, without merit and the same is dismissed.
  19. It is the Complainants’ case that the evidence presented establishes that the Complainants are the registered owners of all that land known as L.R. No. 2256/8 (original 2256/7/1) measuring approximately 100 acres (40.47 hectares) situated in Thirime area Thogoto, Kikuyu Sub-County, Kiambu County. The Complainants aver that they were allocated the suit property on 24<sup>th</sup> January 2014. Further, the Complainants argue that the valuation report dated 15<sup>th</sup> May 2024 presented in evidence confirms that a portion of the suit property was hived off for purposes of the construction of the Nairobi Southern By-Pass.
  20. The issue of whether or not the Complainants’ portion of land was compulsorily acquired necessitates the establishment of the ownership of the suit property or the proprietary interests alleged to be owned by the Complainants. The tribunal will also analyse whether the evidence establishes acquisition of a portion of the suit property as alleged.
  21. First, the letter dated 24<sup>th</sup> January 2014 relied upon by the Complainants as evidence of allocation states as follows in the relevant part:

24<sup>th</sup> January 2014

Thogoto Ukai Self Help Group

P.O Box 51

Kikuyu

Re: Application for Allocation of L.R. No. 2256/8 (original L.R. No 2255/7/1) – Thogoto, Nairobi

Your application as above dated 31<sup>st</sup> March 2009 refers.

<sup>1</sup> Para. 16



This is to inform you that the National Land Commission has approved the allocation of the above plot to your group subject to the planning of the site.

You are kindly advised to liaise with the Director of Physical Planning for the planning of the site to facilitate formalization of the allocation.

J.O. Kemoni

For: The Chairman

National Land Commission

22. Subsequently, the Respondent wrote another letter to the Complainants dated 16<sup>th</sup> May 2014 (the same is also provided in the Complainants' bundle of documents). In the letter of 16<sup>th</sup> May 2014, the Respondent informs the Complainants that it has initiated the planning process in accordance with the Physical Planning Act with a view to formalizing the allocation. There is no other document that has been provided by the Complainants to evidence finalization of the allocation or indeed ownership of the suit property.
23. Secondly, the Complainants have alleged that the government acquired a portion of land being part of the suit property measuring 2.8475 acres (1.1524 hectares). What we have not been told, however, is when this alleged acquisition happened. The evidence of the Respondent is to the effect that acquisition of land for the Nairobi Southern By-Pass project started in the year 2006. Did this alleged acquisition of part of the suit property happen then or did it happen later? Even though the witness statement of Peter Keni Kanuna, the Secretary of Thogoto Ukai Self Help Group is to the effect that this alleged acquisition displaced the members of the group, he does not provide details on when this occurred.
24. It is clear to us that the Complainants have no valid title to the suit property. Further, the evidence presented as evidence of ownership merely proves that they are in the process of being allocated the suit property pursuant to their application dated 31<sup>st</sup> March 2009 (the application for allocation). The Respondent's letter dated 24<sup>th</sup> January 2024 is conditional approval of allocation which is subject to compliance with the Physical Planning Act before an allocation is granted.
25. Even if the Complainants had been allocated the suit property, which they haven't been allocated, the same would not be evidence of ownership as they would be required to take further steps before a certificate of title is issued. In *Philma Farm Produce & Supplies & 4 others vs. The Attorney General & 6 others* (2012) eKLR, the court held as follows:

“The petitioners' claim is grounded on two letters of allocation of the suit properties. These letters do not confer a proprietary right but only a right to receive property or to be allocated on complying with the terms and conditions stated therein. The right to be allocated the property is a contractual right and must be determined in accordance with the ordinary rules of contract. It is in this respect that the petitioner claim must fail...

Even if I were to assume in the petitioners' favour that the 2<sup>nd</sup> to 5<sup>th</sup> Petitioners were partners and that they were entitled to the allotment of the suit property, acceptance of the allocation was a conditional offer to be accepted within the time limited and by payment of all the sums of money demanded within that period.”

26. It is also evident from the application for allocation that the Complainants were not even in occupation of the suit property at the time of application. In the said application, the Secretary of the group writes, “We hereby apply for allocation of the above parcel of land which lies adjacent to a strip of land where



our members have been occupying and holding small portions long before independence...” Emphasis added.

27. It is a cardinal rule of the law of evidence that he who alleges must prove. We reiterate the words of the court in *Trust Bank Limited vs. Paramount Universal bank Limited & 2 Others NBI HCCC No. 1243 of 2001* where it was held, “it is trite that where a party fails to call evidence in support of its case, that party’s pleadings remain mere statements of fact since in so doing the party fails to substantiate its pleadings.”
28. There is no doubt that the instant suit neither proves ownership by the Complainants nor proves unprocedural compulsory acquisition as alleged. The same has left us groping in the dark with little help from the pleadings. The fate of dismissal is the only appropriate remedy. With this conclusion, we see no reason in answering the remaining issues. Parties shall bear their own costs.
29. Orders accordingly.

**DATED AND DELIVERED VIRTUALLY AT NAIROBI THIS 29<sup>TH</sup> AUGUST, 2024**

.....

**Dr. Nabil M. Orina - Chairperson**

**George Supeyo - Member**

**Before: -**

Mr. Murunga for the Complainants

Mr. Mbuthia for the Respondent

John – C/A

