



**Gunda (Suing as a legal representative of the Estate of banzi Gunda Banzi
(Deceased) v Kenya Railways Corporation & another (Tribunal Case
E013 of 2024) [2024] KELAT 677 (KLR) (27 May 2024) (Judgment)**

Neutral citation: [2024] KELAT 677 (KLR)

**REPUBLIC OF KENYA
IN THE LAND ACQUISITION TRIBUNAL
TRIBUNAL CASE E013 OF 2024
NM ORINA, CHAIR & G SUPEYO, MEMBER
MAY 27, 2024**

BETWEEN

**JUMAA BANZI GUNDA (SUING AS A LEGAL REPRESENTATIVE OF THE
ESTATE OF BANZI GUNDA BANZI (DECEASED)) PLAINTIFF**

AND

KENYA RAILWAYS CORPORATION 1ST DEFENDANT

NATIONAL LAND COMMISSION 2ND DEFENDANT

JUDGMENT

Background

1. On various dates in 2014 and 2015, the 2nd Respondent published notices of intention to acquire various parcels of land for purposes of the construction of the Mombasa – Nairobi Standard Gauge Railway. These notices included: Gazette Notice No. 724 of 7th February 2014 and Gazette Notice No. 4096 of 20th June 2014 which identified land known as South Samburu/58 belonging to South Samburu Group Ranch measuring approximately 102.611 hectares. Subsequently, the 2nd Defendant also published Gazette Notice No. 5503 of 8th August 2014 being a notice of inquiry in respect of, among others, the said South Samburu/58.
2. Upon conclusion of the inquiries, the 2nd Respondent sent a schedule for payments dated 6th October 2014 to the 1st Defendant who was at this time making payments directly to the project affected persons. In the said schedule, under parcels of land identified by serial numbers 318, 322, and 329 within the said South Samburu Group Ranch (hereinafter the suit property), the 2nd Defendant advised the 1st Defendant to pay Loi Mangale, Zadze Mangale, and Paulo Mwangale Nahenza, respectively.



3. Subsequently, the 2nd Defendant wrote to the 1st Defendant on 9th May 2015 and asked it to withhold payments in respect of the said three (3) parcels of land pending the resolution of disputes in regard to their ownership. The said letter indicated that the ownership of the three (3) parcels had been disputed by Mdoe Banzi and Banzi Gunda.
4. In a letter dated 5th August 2015, the 2nd Defendant informed the 1st Defendant that through the intervention of the local administration and as confirmed in the Samburu location Chief's letters to the 2nd Defendant dated 4th August 2015 and 28th July 2015 the disputes in regard to parcels of land identified by serial numbers 318, 322, and 329 had been resolved in favour of one Banzi Gunda Banzi and that the said Banzi Gunda Banzi should be paid the sum of Kshs 103,960.00 (in respect of parcel number 318), Kshs. 77,280.00 (in respect of parcel number 322) and Kshs. 841,494.00 (in respect of parcel number 329). The total amount being Kshs. 1,022,734.00.
5. These sums have not been paid to date. The Plaintiff in this case, Jumaa Banzi Gunda (suing as a legal representative of the estate of Banzi Gunda Banzi) seeks from this Tribunal, among others, a declaration that the Plaintiff is entitled to just and/or prompt compensation and an order to compel the Defendants to pay him a sum of Kshs. 1,022,734.00 together with damages, interest and costs of the suit.

The Plaintiffs' Case

6. The Plaintiff contends that the deceased, Banzi Gunda Banzi, was the bonafide owner of all that parcel of land identified by serial numbers 318, 322, and 329 in the 2nd Defendant's compensation schedule dated 6th October 2014 in regard to the compulsory acquisition of land for the construction of the 1st phase of the Standard Gauge Railway line from Mariakani to Mtito Andei. This land is said to have been unsurveyed and/or unregistered at that time.
7. The Plaintiff avers that he learnt that strangers were taking advantage of the unsurveyed and unregistered status of the suit property by posing as the legitimate owners for purposes of compensation. This, the Plaintiff asserts, was done in collusion with officials of the Defendants.
8. The Plaintiff contends that having got wind of the plans to compensate strangers who had posed as the rightful owners, the deceased reported the matter to the local administration who in turn wrote to the 2nd Respondent advising them not to authorize payment with respect to the suit property until the dispute as to ownership was resolved.
9. Consequently, the Plaintiff avers, the 2nd Defendant advised the 1st Defendant via a letter dated 9th May 2015 to withhold payments with respect to the suit property until the issue of ownership was resolved.
10. It is the Plaintiff's contention that despite the 2nd Defendant advising the 1st Defendant that the dispute had been resolved in favour of the deceased and asking the 1st Defendant to make payments to the deceased accordingly, the said compensation has not been paid and the deceased or his estate has not been given reasons why.
11. The Plaintiff alleges that the estate of the deceased has consequently been deprived of economic benefits that would have accrued to it had it used the subject property to engage in income generating activities or sold the same.
12. At the hearing conducted on 18th April 2024, the Plaintiff's witness one Harrison Mdoe Banzi testified on behalf of the Plaintiff. Mr. Banzi adopted his witness statement dated 22nd February 2024 and relied on the list of documents filed by the Plaintiff dated 22nd February 2024. Mr. Banzi stated that he was a nephew to the deceased whom he had accompanied to follow up on the suit property hence his



knowledge of the facts underpinning the case. The witness reiterated the sequence of events in this case as stated in the Plaintiff and confirmed that the deceased or his estate had not been paid any compensation in regard to the suit property.

13. On cross-examination by Ms. Muriranja for the 1st Defendant, Mr. Banzi stated that he had no written authority to act on behalf of the estate of the deceased. On the ownership of the suit property, Mr. Banzi stated that the Chief's letter confirmed the ownership of the suit property after the dispute was resolved.
14. On re-examination, the witness asserted that he was only a witness on behalf of the Plaintiff who was underage at the time the acquisition happened.

The 1st Defendant's Response

15. The 1st Defendant responded to the Plaintiff via a statement of Defence dated 20th March 2024 and a Witness statement of Nathaniel Ochieng, a senior land surveyor of the 22nd March 2024.
16. The 1st Defendant describes the process of compulsory acquisition that was followed in this case that largely agrees with the assertions of the Plaintiff but denies liability and instead states that compensation is within the 2nd Defendant's mandate. The 1st Defendant avers that pursuant to a Parliamentary directive, the 1st Defendant submitted all funds for compensation to the 2nd Defendant and all the payments were henceforth done by the 2nd Defendant.
17. The 1st Defendant, however, avers that the Plaintiff has not presented the requisite documents to the 2nd Defendant for purposes of compensation. It is, further, the 1st Defendant's case that there has been no evidence that has been adduced to demonstrate ownership.
18. The 1st Defendant presented Mr. Nathaniel Ochieng, a Senior Land Surveyor working for the 1st Defendant, as its witness. Mr. Ochieng adopted his statement dated 22nd March 2024 and also relied on the 1st Defendant's list of documents dated 20th March 2024. In his witness statement, Mr. Ochieng reiterates the defence and asserts that the 1st Defendant is not responsible for effecting compensation as per the law and the Parliamentary directive of the year 2016. Mr. Ochieng nevertheless notes that the Plaintiff has never presented any ownership documents to support his claim for compensation.
19. On cross-examination by Mr. Maitha, counsel for the Plaintiff, Mr. Ochieng stated that the 2nd Defendant has the mandate to determine the rightful beneficiaries of compensation and that the 1st Defendant wouldn't object to such determination. Mr. Ochieng, further, asserted that the 2nd Defendant is responsible for issuing of award letters and should shoulder blame where letters of award have not been issued.
20. On re-examination, Mr. Ochieng clarified that for unsurveyed or unregistered land, the 2nd Defendant is mandated to identify the bonafide parties to be compensated.

The 2nd Defendant's Response

21. The 2nd Defendant neither participated nor filed a response in these proceedings despite being duly served with all the documents.

Analysis and Determination

22. The Plaintiff and the 1st Defendant have invited us to determine whether the Plaintiff is entitled to the orders sought. The Plaintiff has additionally asked us to determine whether the Defendants owe the Plaintiff any money. The 1st Defendant on its part has additionally asked us to determine whether the



Plaintiff has proved his case to the required standard. All these questions/issues are inter-related and they point to one main issue: Is the Plaintiff entitled to the orders sought?

23. Both parties agree on the background facts underpinning this case. The point of departure is why the compensation has not been effected in this case. From the facts admitted by both the Plaintiff and the 1st Defendant, it is not disputed that the Defendants acquired land, which was unsurveyed and identified by serial numbers 318, 322, and 329. It is also not in dispute that upon inquiries, certain persons were identified as the owners of parcels of land that were affected by the acquisition. In regard to the suit property, the deceased disputed the ownership of the suit property as had been determined by the 2nd Defendant. Upon a dispute resolution process that was spearheaded by the local administration, the deceased was confirmed as the bonafide owner of the suit property. Subsequently, and upon the conclusion of this dispute resolution process, the 2nd Defendant advised the 1st Defendant to effect payment to the Plaintiff as compensation for the suit property. It is also admitted that at the time this process was happening, the 1st Defendant was paying compensation directly to project affected persons upon being advised by the 2nd Defendant. This however changed in the year 2016 when the 1st Defendant remitted all the funds to the 2nd Defendant for purposes of compensation.
24. In order to effectively respond to the question in issue, we have taken the liberty to rehash the process of acquisition which is laid down in the [Land Act](#). This process has been summarized by the High Court in the now locus classicus case of Patrick Musimba vs. National Land Commission & 4 others [2016] eKLR:

Process of compulsory acquisition

1. In summary, the process of compulsory acquisition now runs as follows: -
 1. 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.
 1. 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.
 1. 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](#).
 1. The foregoing process constitutes the preliminary or pre-inquiry stage of the acquisition.



1. 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.
 1. 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.
 1. 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](#).
 1. 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](#).
25. Of particular interest to us is the process of inquiry where the 2nd Defendant determines the persons interested and the compensation due to them. Pursuant to Section 112 of the [Land Act](#), the 2nd Defendant is obliged to conduct inquiries in order to determine ownership of properties subject to compulsory acquisition and making a determination on the amount of compensation payable. In that regard, the 2nd Defendant issues a Gazette Notice inviting all persons who have an interest in the properties earmarked for acquisition to attend an inquiry meeting and present documents of ownership and representations that would be relevant to the determination of the compensation payable.
26. In conducting this process, the 2nd Defendant exercises quasi-judicial authority which involves receiving submissions and making a determination after conducting an inquiry. As we have observed in [Registered Trustees of Ruiru Sports Club v Kenya National Highways Authority & another \(Tribunal Case E002 of 2023\)](#) [2023] KELAT 1373 (KLR) (13 December 2023) (Judgment):

The essence of an inquiry under Section 112 of the [Land Act](#) being conducted in a quasi-judicial manner is for purposes of due process to all the persons with an interest in the property a chance to be heard before a determination is made. As noted by the High Court in Patrick Musimba, there was a deliberate effort by the legislature in giving effect to



Article 40 of the Constitution by enacting a comprehensive procedure, a departure from the arbitrariness of the past.

27. It is, however, the case that even where this process has been conducted, a party dissatisfied with the determination of the 2nd Defendant following an enquiry can challenge the finding on interests affected or the amount of compensation to be awarded. In a case where the 2nd Defendant's determinations are disputed, the 2nd Defendant would rightfully withhold payments pending resolution of such disputes. In regard to the suit property, the evidence confirms that the dispute was resolved in favour of the deceased as the rightful owner of property identified through serial numbers 318, 322, and 329.
28. We also note that the dispute in regard to the suit property was resolved with the assistance of the local administration through the Chief – Samburu. We are satisfied that the dispute was satisfactorily resolved through alternative dispute resolution and the correct payee identified in regard to the suit property. Indeed, as observed by L.G. Kimani J in Musili v Kyondo (Environment and Land Appeal E010 of 2021) [2022] KEELC 15723 (KLR) (11 October 2022) (Judgment), such forms of dispute resolution which include traditional dispute resolution mechanisms are important in resolving disputes over unregistered and unsurveyed land as they involve persons from the community who understand the history well.
29. Even though unregistered land is different from registered land in terms of proof of ownership, either attracts the same protection of the law and especially Article 40(3) of the Constitution. As held in the case of Danson Kimani Gacina & another v Embakasi Ranching Company Ltd [2014] eKLR:

The law on unregistered land, unlike on registered land, is slightly unclear. Proof of ownership in the case of the former is found in documentary evidence which lead to the root of title. There must be shown an unbroken chain of documents showing the true owner. Once proof of ownership is tendered then the holder of the documents is entitled to the protection of the law.
30. Throughout this process, it is clear to us that the deceased was the bonafide owner of the suit property and he was entitled to compensation. There has been no reason advanced before us why that compensation has not been paid up to date. The argument by the 1st Defendant that the deceased or the legal representative of his estate did not present the necessary documents in order to be paid is unsustainable as it seeks to introduce stumbling blocks on the path of the Plaintiff who has been waiting for compensation for nearly ten (10) years.
31. The Defendants cannot, therefore, demand that project affected persons who are owners of unregistered and unsurveyed land must produce "ownership documents" in order to be paid. It is absurd that while the Defendants were well aware of the unregistered and unsurveyed status of the suit property at the time of acquisition, they now turn to demand registration documents from the Plaintiff after the same has been acquired. This is despite the fact that the 2nd Defendant undertook an elaborate process of verifying the ownership of the suit property. It is unfair to subject the Plaintiff to an additional process of verifying ownership of the suit property a second time while the same has already passed hands and is now vested in the 1st Defendant.
32. We reject the invitation by the 1st Defendant to conduct an inquiry into the ownership of the suit property as this is an exercise that was concluded by the 2nd Defendant. If a dispute existed in regard to that determination, then such a dispute would lie elsewhere. Furthermore, we hold that the reasons advanced by the 1st Defendant to try to explain why the compensation has not been paid to the estate of the deceased are at best speculative. The 2nd Defendant has never proffered any reasons to the deceased or a representative of his estate on why the compensation has not been paid. This inaction is a flagrant



- breach of the dictates of Article 47(2) of the Constitution of Kenya which enjoins an administrative body to give written reasons to a person whose rights are likely to be affected by administrative action.
33. We conclude that in the absence of any further challenge to the ownership of the suit property, the 2nd Defendant was under a legal duty to pay the deceased the compensation amount, promptly, as required by the Constitution and the Land Act. A failure to do that is a violation of the Plaintiff's rights under Article 40(3) of the Constitution and the Land Act and we so hold.
34. As a side note, we observe that this case is symptomatic of an elitist approach to land tenure systems in Kenya. The Constitution and indeed the Land Act does not discriminate based on the different land tenures when it comes to the rights under Article 40(3). In fact, Section 5 of the Land Act expressly states that, "There shall be equal recognition and enforcement of land rights arising under all tenure systems and non-discrimination in ownership of, and access to land under all tenure systems." This provision unequivocally requires the respect of land rights arising out of dealings in regard to land under all tenure systems recognized in the law which include customary land tenure system which would ordinarily entail unsurveyed and unregistered land. It is incumbent upon the 2nd Defendant to come up with structures that recognize a differentiated approach to proving ownership for unsurveyed and unregistered land.
35. Finally, both parties have made comments in regard to the failure of the Plaintiff to testify. It is the prerogative of a party to select the relevant witnesses to support its case. The Tribunal also summoned the Plaintiff to confirm his identity. In this case, we are satisfied that the testimony of the Plaintiff's witness was sufficient to support his case and the failure of the Plaintiff to testify was not detrimental to his case. We refer to the superior court case of Samuel Kinyanjui Gichamba v. Kalenjin Enterprises Limited & 2 Others (2018) eKLR.
36. Turning to the issue of what the appropriate orders would be, we believe that an order of compensation together with interest earned from the time of acquisition will be sufficient to remedy the injustice in this case. The Plaintiff is also entitled to special damages pleaded as well as costs of this suit.
37. For the above reasons, we find that the Plaintiff's case is merited and the same is allowed on the following terms: -
- a. An order be and is hereby issued directing the 2nd Defendant to pay the estate of the late Banzi Gunda Banzi the sum of Kshs. 1,022,734.00 being compensation for acquisition of land referenced by serial numbers 318, 322, and 329 which acquisition was effected through Gazette Notice No. 724 of 7th February 2014 and Gazette Notice No. 4096 of 20th June 2014;
 - b. Interest on (a) at court rates from 20th June 2014 until payment in full;
 - c. Special damages of Kshs. 50,000.00;
 - d. Costs to be borne by the 2nd Defendant.
38. It is so ordered.

DATED AND DELIVERED VIRTUALLY AT NAIROBI THIS 27TH DAY OF MAY 2024.

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DR. NABIL M. ORINA - CHAIRPERSON

MR. GEORGE SUPEYO - MEMBER

Before: -



Maitha for Plaintiff

N/A for The Defendants

Everlyne – C/A

