



**Mbebe v National Land Commission & another (Tribunal Case  
E029 of 2024) [2024] KELAT 1213 (KLR) (2 August 2024) (Judgment)**

Neutral citation: [2024] KELAT 1213 (KLR)

**REPUBLIC OF KENYA  
IN THE LAND ACQUISITION TRIBUNAL  
TRIBUNAL CASE E029 OF 2024  
NM ORINA, CHAIR & G SUPEYO, MEMBER  
AUGUST 2, 2024**

**BETWEEN**

**DAVID K MBEBE ..... CLAIMANT**

**AND**

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

**KENYA NATIONAL HIGHWAYS AUTHORITY ..... 2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

**Introduction**

1. The substratum of the dispute in this case is whether the award of compensation issued following the compulsory acquisition of Land Reference No. Mutomo/Mwala/769 measuring 0.1045 hectares (hereinafter the “suit property”) was the sum of Kshs. 1,533,637.00 or the sum of Kshs. 999,120.00. Whereas the Claimant is adamant that it is the former, the Respondents counter that the award of compensation was the latter, and not a coin more.
2. The parties agree on the background informing this dispute save for the above. Briefly, on 12<sup>th</sup> January 2018, the National Land Commission (the 1<sup>st</sup> Respondent/the Commission) through Gazette Notice No. 177 published a notice of the intention to compulsorily acquire, among others, the suit property for the purpose of construction of the Kibwezi-Mutomo-Kitui-Kabati-Migwani (A9/B64) Road Project. In the said notice, the Claimant was identified as the registered proprietor.
3. Subsequently, on 25<sup>th</sup> May 2018, the 1<sup>st</sup> Respondent through Gazette Notice No. 5076 published a notice of inquiry notifying interested persons, including the Claimant, of the intention to hear claims for compensation. The inquiry was to be held at Mutomo Chief’s Office at 9.30 a.m. on 19<sup>th</sup> June 2018.
4. The Claimant has not been paid any money until today following the acquisition.



### **Claimant's Case**

5. The Claimant avers that on 21<sup>st</sup> June, 2018 the 1<sup>st</sup> Respondent issued him with an award of compensation for the sum of KShs. 1,533,637.00 which award the Claimant avers he accepted on even date. The Claimant contends that despite issuance of the aforesaid award as well as formal and informal inquiries on the same, the Claimant is yet to receive any amounts towards compensation.
6. Consequently, the Claimant contends that as a result of the Respondents' actions, he has suffered and continues to suffer pecuniary loss and embarrassment for being denied the benefit of the compensation whilst the Respondents profited from the acquisition. The Claimant, therefore, prays for the following:
  - i. A Declaration that the Claimant's proprietary interests in Land Title Number Mutomo/Mwala/769 were compulsorily acquired;
  - ii. A Declaration that the Claimant herein is entitled to prompt, just and adequate compensation in full within the meaning and tenor of Article 40(3) (b) (i) in the sum of One Million Five Hundred and Thirty-Three Thousand Six Hundred and Thirty-Seven Shillings (Kshs. 1,533,637/-) for the compulsory acquisition of his proprietary interests in Land Title Number Mutomo/Mwala/769.
  - iii. An order directing the Respondents to forthwith pay the compensation award in the sum of One Million Five Hundred and Thirty-Three Thousand Six Hundred and Thirty-Seven Shillings (Kshs. 1,533,637/-) together with the accrued interest at the then prevailing Central Bank base lending rate of 13.00% from 21<sup>st</sup> June 2018 until payment in full;
  - iv. An award of loss of income in the sum of Kshs. 600,000/-
  - v. General damages for trespass and mesne profits.
  - vi. Costs of the suit plus interest.
  - vii. Any other order as this honourable court may deem fit and appropriate.

### **1<sup>st</sup> Respondent's Case**

7. The 1<sup>st</sup> Respondent, vide its Response dated 8<sup>th</sup> July, 2024 refuted the claims by the Claimant and averred that the monies meant for compensation of the Claimant's property had not been remitted to it by the Kenya National Highways Authority (the 2<sup>nd</sup> Respondent/KENHA), being the acquiring authority, and which failure is the reason behind the failure to pay the Claimant the compensation.
8. However, in a further response dated 25<sup>th</sup> July 2024, following leave of this tribunal, the 1<sup>st</sup> Respondent asserted that the Claimant was issued with an award of Kshs. 999,120.00 as compensation through a payment schedule dated 2<sup>nd</sup> March 2021. The 1<sup>st</sup> Respondent also filed a further list of documents dated 1<sup>st</sup> August 2024 which contains a letter of award dated 12<sup>th</sup> January 2021 and a letter of acceptance or contestation of even date.

### **2<sup>nd</sup> Respondent's Case**

9. The 2<sup>nd</sup> Respondent filed a Replying Affidavit of Dr. Anthony Kusimba, sworn on 15<sup>th</sup> July 2024, in response to the Claim. Dr. Kusimba identifies himself as a Senior Surveyor, Survey Department Directorate of Highways Design and Safety for the 2<sup>nd</sup> Respondent. He avers that pursuant to the letter



dated 2<sup>nd</sup> March 2021 from the 1<sup>st</sup> Respondent, the compensation awarded to the Claimant is Kshs. 999,120.00.

10. Dr. Kusimba further avers that the 2<sup>nd</sup> Respondent noted the discrepancy between the award letter dated 21<sup>st</sup> June 2018 and the payment schedule from the 1<sup>st</sup> Respondent upon which the 2<sup>nd</sup> Respondent was to effect payment. In effect, it is the 2<sup>nd</sup> Respondent's case that the Claimant's demand for payment of Kshs. 1,533,637/- is contrary to the revision by the 1<sup>st</sup> Respondent which had advised the 2<sup>nd</sup> Respondent to pay the Claimant the sum of Kshs. 999,120/-.
11. In sum, Dr. Kusimba avers that the Claimant will be compensated as soon as the discrepancy is resolved.

### **Analysis and Determination**

12. When this matter was mentioned for directions on 1<sup>st</sup> August 2024, parties mutually agreed to have the same disposed of by way of documentary evidence and submissions. All parties have filed submissions identifying issues that the Tribunal should pronounce itself on.
13. Before we embark on the main issues in the suit, the 2<sup>nd</sup> Respondent has through its submissions raised an issue that concerns our jurisdiction. We are compelled to address that first. The 2<sup>nd</sup> Respondent submits that the Tribunal is not properly constituted within the meaning and tenor of Section 133A (2) (sic) of the Land Act which places the quorum of the Tribunal at three members whereas the Tribunal has been sitting with two members.
14. We are of the view that raising such a pertinent issue at the point of final submissions has an effect on the right to a fair hearing and a court should ordinarily disregard it. However, we have taken the liberty to address it below.
15. Section 133A (1) of the Land Act states as follows:  
  
133A. Establishment of the Tribunal.
  1. There is established a Tribunal to be known as the Land Acquisition Tribunal which shall consist of three persons appointed by the Cabinet Secretary through a notice in the Gazette.
16. There is no provision of the Land Act, or any other law, that provides for the quorum of the Land Acquisition Tribunal. If the legislature had intended to prescribe quorum for the tribunal, nothing could have been easier. Indeed, a number of existing tribunals have their quorums established under law. For instance, the quorum for the Energy Tribunal under Section 33(2) of the Energy Act is set at three members. The Energy tribunal consists of not more than seven members. Likewise, Section 102C of the Kenya Information and Communications Act sets the quorum of the Communication and Multi Media Appeals Tribunal as the Chairperson and four members.
17. We are not convinced that it was the intention of the legislature that the full membership of the tribunal must be present for the tribunal to be quorate. Such an intention would have been clearly expressed in our establishing law. We are also guided by the sentiments of W.K. Korir, J in Republic V Industrial Property Tribunal Exparte Sanitam Services (EA) Ltd [2012] eKLR where he stated as follows in regard to the Industrial Property Tribunal whose establishing law did not provide for quorum:

The parties are agreed that the Act and the Industrial Tribunal Rules, 2002 do not provide for the quorum of the Tribunal. A plain reading of Section 113(1) of the Act gives the impression that all the five members of the Tribunal have to hear a matter in order for its proceedings to be valid. The Applicant also argues that the chairman has to be present in



all the Tribunal's proceedings. The Tribunal and the Interested Party, however, argue that the said section cannot be interpreted in the manner suggested by the Applicant. In my view, it would be unreasonable to imagine that in the event of one member being absent no case can proceed before the Tribunal. This would be a very narrow interpretation of the law which would not give essence to the intentions of Parliament. Such an interpretation would result in absurd outcomes. I believe that the main objective of creating the Tribunal was to have a body composed of persons knowledgeable in industrial property disputes to hear and dispose of such disputes expeditiously. Emphasis added.

18. It is our finding, therefore, that the tribunal is properly constituted to hear and determine disputes before it.
19. Back to the substantive issues, the parties have identified the following issues for resolution:
  - i. Whether the Claimant is entitled to compensatory award of Kshs. 1,533,637/-
  - ii. Whether the Claimant is entitled to interest at 13.00% from 21<sup>st</sup> June 2018 until payment in full.
  - iii. Whether the Claimant is entitled to loss of income and the general damages sought.
  - iv. Costs.
20. As stated at the beginning, the main issue that must be resolved before other issues are considered is whether the compensation awarded to the Claimant is for the sum of Kshs. 1,533,637/- or for the sum of Kshs. 999,120/-. Issuance of an award comes at the tail end of an acquisition process. Section 113 of the Land Act provides as follows in this regard:
  1. Upon the conclusion of the inquiry, the Commission shall prepare a written award, in which the Commission shall make a separate award of compensation for every person whom the Commission has determined to have an interest in the land.
  2. Subject to Article 40(2) of the Constitution and Section 122 and 128 of this Act, an award—
    - a. shall be final and conclusive evidence of—
      - i. the size of the land to be acquired;
      - ii. the value, in the opinion of the Commission, of the land;
      - iii. the amount of the compensation payable, whether the persons interested in the land have or have not appeared at the inquiry; and
    - b. shall not be invalidated by reason only of a discrepancy which may thereafter be found to exist between the area specified in the award and the actual area of the land.
  3. If an interest in land is held by two or more persons as co-tenants, the award shall state —
    - (a) the amount of compensation awarded in respect of that interest; and
    - (b) the shares in which it is payable to those persons.
  - (4) Every award shall be filed in the office of the Commission.”



21. The case of Patrick Musimba vs. National Land Commission & 4 others [2016] eKLR which elaborates this process to a great detail provides as follows in regard to issuance of awards:
92. 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.
22. There is no doubt in our minds that the law intended for each project affected person to be given an individual award. This is necessary so that such a project affected person can exercise the choice of acceptance or rejection. It is necessary at this stage to ask if there was an award of compensation issued and what the amount thereof is.
23. The Claimant relies on a document titled “valuation for compulsory acquisition” as proof of award issued by the 1<sup>st</sup> Respondent. The document which is provided as document number 4 in the Claimant’s list and bundle of documents dated 21<sup>st</sup> June 2024 indicates: the suit property reference, ownership and has a valuation section which tallies the “total compensation payable” to be Kshs. 1,533,637/-. The document does not, however, indicate the author although it has a logo of the 1<sup>st</sup> Respondent at the top.
24. The 1<sup>st</sup> Respondent argues that the document the Claimant relies upon as proof of an award is not an actual letter of award but rather a form filed during inquiries as to the estimated value of the parcel of land to be acquired. This information is provided by the Claimant during enquiries before the Commission embarks on valuation.
25. The 2<sup>nd</sup> Respondent submits that pursuant to Section 113(2)(a) of the Land Act, any person who seeks to enforce payment within the meaning of Article 40(3)(b) of the Constitution must sufficiently prove the existence of a valid award from which their right to payment arises. The 2<sup>nd</sup> Respondent therefore submits that a claim based on an award in a valuation form fails to meet the aforementioned threshold and therefore fails.
26. Our reading of Section 113 of the Land Act is that an award must be issued by the 1<sup>st</sup> Respondent and it must be clear that it is an award. Although the document presented in evidence by the Claimant as an award contains the 1<sup>st</sup> Respondent’s logo, the same does not indicate its origin or author. The said document does not state that it is an award of compensation.
27. On the other hand, the 1<sup>st</sup> Respondent, through its further list and bundle of documents dated 1<sup>st</sup> August 2024, filed a document titled “award” which indicates an award of Kshs. 999,120/- in favour of the Claimant. This document was issued by one Isabel Njeru – Directorate of Valuation & Taxation on behalf of the Chairperson of the 1<sup>st</sup> Respondent on 12<sup>th</sup> January 2021. The 1<sup>st</sup> Respondent further filed another document which is indicated to be an “acceptance or contestation of award” of even date. This document, on the face of it, indicates that the Claimant accepted the award by appending his signature thereto accepting the award of Kshs. 999,120/-.
28. The Claimant did not contest the validity of these documents.



29. We, therefore, find that the Claimant was given an award of compensation for the sum of Kshs. 999,120/- and the award was accepted on 12<sup>th</sup> January 2021. Having accepted the said award, the Claimant is entitled to be compensated the sum of Kshs. 999,120/- as he did not contest the same. A party who is dissatisfied with an award given by the 1<sup>st</sup> Respondent has a right to appeal the same but must indicate that he or she contests the award given at the time the same is issued to such a party. The Claimant did not choose this route.
30. The sum of our analysis is that the Claimant was awarded compensation for the sum of Kshs. 999,120/- on 12<sup>th</sup> January 2021 which he accepted. By accepting the said award, the Claimant entered into a legally enforceable contract with the 1<sup>st</sup> Respondent. The Claimant cannot turn around and contest the awarded compensation by presenting another figure purporting to be the award. Having failed to contest the awarded sum, the only recourse available to the Claimant is to lodge a complaint to the effect that the 1<sup>st</sup> Respondent has not paid the awarded compensation.
31. Having said that, it is not clear to us why the awarded compensation has not been paid. We note that via letter dated 2<sup>nd</sup> March 2021 (which has been availed in evidence by the 2<sup>nd</sup> Respondent), the 1<sup>st</sup> Respondent advised the 2<sup>nd</sup> Respondent to make payments to project affected persons who had accepted their awards and were contained in a schedule thereof. In this schedule, the 1<sup>st</sup> Respondent identifies the Claimant, among others, as one of those who had accepted their awards. Whereas the 1<sup>st</sup> Respondent may delegate the payment of compensation sums from the acquiring authority directly to the project affected persons, the 1<sup>st</sup> Respondent bears the statutory responsibility for effecting such payments. Indeed, Section 111A requires the acquiring authority to deposit compensation funds with the 1<sup>st</sup> Respondent “before the acquisition is undertaken.” As this Tribunal has held in *Thuo & 151 others v National Land Commission & 5 others* (Land Acquisition Petition 3 of 2024) [2024] KELAT 1142 (KLR) (12 August 2024) (Judgment), this requirement, “flows from the Constitutional imperative under Article 40(3) to ensure that compensation is promptly done.”<sup>1</sup>
32. In regard to whether the Claimant is entitled to interest as from 21<sup>st</sup> June 2018, the 1<sup>st</sup> Respondent contends that it has not received the compensation funds from the 2<sup>nd</sup> Respondent and hence the same has not been deposited in a special account. The 2<sup>nd</sup> Respondent on its part argues that the Claimant has not satisfied the preconditions under Section 115(1) of the Land Act in order to claim interest under Section 117(1) Act of the Land Act.
33. We are persuaded by the 2<sup>nd</sup> Respondent’s interpretation of Section 117(1) to the extent that the same cannot be read in isolation but must be read together with Section 115(1) of the Land Act which lays down circumstances where compensation is not paid and hence justify the payment of interest when the compensation funds are deposited in a special account. Those circumstances are where there is no person competent to receive payment; the person entitled does not consent to receive the amount awarded; or, there is a dispute as to the right of the persons entitled to receive the compensation or as to the shares in which the compensation is to be paid. We, therefore, hold that the Claimant is not entitled to interest pursuant to Section 117(1) of the Land Act as his case does not fall under any of the circumstances under Section 115(1) of the Land Act.
34. On whether the Claimant is entitled to loss of income and general damages, the same is not justified in addition to the award of compensation issued. An award of compensation is a final determination of what is due and owing to a project affected person. In arriving at such an award, the 1<sup>st</sup> Respondent takes into account all factors necessary for compensation and if a project affected person is not satisfied then an appeal lies from that award.

<sup>1</sup> Para. 58.



35. In conclusion, the Claimant's primary case fails. We, however, must note that the 1<sup>st</sup> Respondent has not paid the compensation contained in the award dated 12<sup>th</sup> January 2021 to the Claimant. This is an inordinate delay and a clear violation of the Claimant's rights under Article 40(3) of the Constitution and Section 115(1) of the Land Act. While the Claimant was "confused" on the amount of compensation payable, the Respondents did not have that confusion and ought to have paid promptly. We, therefore, order that the Claimant is entitled to compensation for the sum of Kshs. 999,120/- which shall be paid on or before the expiry of 21 days from the date hereof. He shall also be entitled to interest at court rates from 2<sup>nd</sup> March 2021 until payment in full. Parties shall bear their own costs.
36. Orders accordingly.

**DATED AND DELIVERED VIRTUALLY AT NAIROBI THIS 2<sup>ND</sup> SEPTEMBER, 2024**

.....

**DR. NABIL M. ORINA -CHAIRPERSON**

**GEORGE SUPEYO -MEMBER**

Before:

Mr. Musyoki for the Claimant

Mr. Wang'ondur for the 1<sup>st</sup> Respondents

Mr. Ochieng, Holding Brief for Prof. Mumma, for the 2<sup>nd</sup> Respondent

John – Court Assistant

