



**Majani & another v National Land Commission (Tribunal Case
E003 of 2024) [2024] KELAT 505 (KLR) (25 March 2024) (Ruling)**

Neutral citation: [2024] KELAT 505 (KLR)

**REPUBLIC OF KENYA
IN THE LAND ACQUISITION TRIBUNAL
TRIBUNAL CASE E003 OF 2024
NM ORINA, CHAIR
MARCH 25, 2024**

BETWEEN

EPHRAIM KEYOMBE MAJANI 1ST COMPLAINANT

CYRILLA APONDI BWIRE 2ND COMPLAINANT

AND

NATIONAL LAND COMMISSION RESPONDENT

RULING

1. The Complainants, who are the registered proprietors of all that parcel of land known as Nairobi/Block 225/14 (Previously known as L.R. No. 21132) located within Nairobi County contend that part of their property measuring 0.0434ha was compulsorily acquired for purposes of a project known as James Gichuru – Rironi Junction Road Project. This was done via gazette notices issued on 12th February 2016 and 16th March 2018.
2. Subsequently on 20th June 2019, and upon the Respondent conducting an inquiry to determine the persons interested in the land, the Complainants were issued with an award for a total sum of Kshs. 8,202,900/= as compensation. They accepted this award and provided details to the Respondent for payment.
3. However, the said award has not been paid prompting these proceedings. It is also noteworthy that the Respondent has never communicated to the Complainants why the award has not been paid.
4. On its part, the Respondent has filed a Replying Affidavit sworn on 20th February 2024 by one Doricah Buyaki Ongaga, its Acting Director of Valuation and Taxation, opposing the Complainant's Claim. The gist of the Respondent's Response is that there exists a dispute in regard to the suit property and for that reason the award cannot be paid until the dispute is resolved.



5. The Respondent avers that while plans to effect payment were underway, it received objections from the Ministry of Agriculture, Livestock, Fisheries and Co-operatives through a letter dated 14th February 2022 alleging that the suit property was part of other parcels of land which had been illegally excised from L.R. No. 189/R and L.R. No. 2952 belonging to Kabete Veterinary, hence it is public land.
6. The Respondent further avers that it suspended the payment of compensation pending the resolution of the dispute as to ownership. The Respondent cautions that the jurisdiction to determine disputes over ownership lies with the Environment and Land Court and hence these proceedings are premature.
7. Preliminarily, we find that the response by the Respondent raises certain issues that necessitate addressing before the matter is finally determined. The position adopted by the Respondent raises two key issues. First, the Respondent seems to allude to the doctrine of *lis pendens* as the justification for not satisfying the award given to the Complainants.
8. To our understanding, the doctrine of *lis pendens* connotes existence of a legal action in regard to an immovable property in issue that would restrict dealings in the property or that would put a third party on notice that they would be bound by the outcome of the dispute in case they transact in the property. The doctrine is attributed to the 1618 *works of Sir Francis Bacon* in his Ordinances in Chancery where he describes the doctrine in the following terms:

No decree bindeth anyone that cometh in bona fide by conveyance from the defendant before the bill exhibited; and is made no party either by bill or by order. But where he comes in pendente lite, and while the suit is in full prosecution and without any color of allowance or privity of the Court, there regularly the decree bindeth, but if there were any intermission of suit or the Court were made acquainted with the conveyance, the Court is to give order upon the special matter according to justice.¹

9. The doctrine of *lis pendens* was imported to our jurisdiction through Section 52 of the now repealed *Indian Transfer of Property Act* but the same is still a doctrine of common law. The Supreme Court of India in *Dev Raj Dogra and Others. v Gyan Chand Jain and Others*² has explicated the conditions to be met for the implementation of the doctrine as follows:
 - i. A suit or a proceeding in which any right to immovable property must directly and specifically in question must be pending;
 - ii. The suit or the proceeding shall not be a collusive one;
 - iii. Such property during the pendency of such a suit or proceeding cannot be transferred or otherwise dealt with by any party to the suit or proceeding so as to affect the right of any other party thereto under any decree or order which may be passed therein except under the authority of Court. In other words, any transfer of such property or any dealing with such property during the pendency of the suit is prohibited except under the authority of the Court, if such transfer or otherwise dealing with the property by any party to the suit or proceeding affects the right of any other party to the suit or proceeding under any order or decree which may be passed in the said suit or proceeding. (Emphasis added)

¹ James Spedding et al (eds), *The Works of Francis Bacon* (Houghton Mifflin, 1900)

² MANU/C/0500/1981



10. From the documents filed, it is clear that the rights to the suit property are not pendente lite so as to injunct the Respondent from effecting the award to the Complainants. The Respondent has not directed the Tribunal to proceedings pending before another forum touching on the ownership of the suit property. Despite their inquiries before filing this suit, the Complainants were not told why payment of the award could not be effected.
11. It is our finding, therefore, that the doctrine of lis pendens is not satisfied in this case. It is not upon the Respondent to invoke the doctrine as a reason not to perform its mandate without escalating the question of ownership to the right forum for resolution.
12. In exercise of its mandate, the Respondent is tasked with conducting due diligence to establish ownership of land that is sought to be compulsorily acquired. We, however, recognize the fact that such due diligence conducted may not establish all the necessary information on any potential opposing claims over ownership. We also take cognizance that at the time of making the award, the Respondent was satisfied that the suit property belongs to the Complainants. This determination does not, however, shut the door on any subsequent steps the Respondent may take to ascertain ownership of a property subject of compulsory acquisition especially when an opposing claim is presented after the process has been completed or pending payment. In [*National Land Commission v Afrisons Export Import Ltd and Others*](#) (ELC Reference no. 1 of 2018), a three-judge bench of the Environment and Land Court pronounced itself as follows:

We appreciate that scenarios may arise from time to time, when issues calling for the Court's determination may come up after the Applicant has already pronounced itself on a matter. It would not be prudent to shut the Court's doors in such circumstances when Parliament left that door wide open. It is therefore our finding that references under Sections 127 and 128 of the [*Land Act*](#) can be brought at any time.³

13. In a case where the Respondent receives information that seeks to impugn its determination as to ownership and the award given, the Respondent is under a duty to hold on to the payment and refer the dispute to the right forum for resolution. The Respondent cannot however hold on to the money and do nothing on the pretext of existence of a dispute. The Respondent must do this without delay. As held in [*National Land Commission v Afrisons Export Import Ltd and others*](#) (*supra*):

...a reference to this Court ought to be made timeously. It may not serve any useful purpose for the Applicant to move the Court on a reference when it has already concluded the process of compulsory acquisition and paid out compensation because recovery of public funds may be difficult after the funds have been dissipated.⁴

14. The second issue raised by the Respondent is the argument that the Complainants' suit is premature as the jurisdiction to determine ownership disputes lies with the Environment and Land Court. One would wonder then what the right time would be for the Complainants to pursue their interests. On the one hand, the Respondent has taken no action to determine if the claim by the Ministry of Agriculture raises issues that would defeat the Complainants' interests but, on the other hand, the Respondent wants the Complainants to wait. Is this a wait that mirrors the hopelessness exhibited in Samuel Beckett's *Waiting for Godot*? Indeed, it seems so. We reiterate the holding in the [*National land Commission v Afrison Export Import Ltd and Others*](#) that a reference for determination of competing interests must be done timeously.

³ Para. 138.

⁴ Para. 139.



15. Even though the Complainants have not urged us to determine that they are the rightful owners of the suit property, it is impossible to make a final determination on the questions touching on rights under Article 40(3) of the Constitution of Kenya 2010 without determining if they are the lawful owners of the suit property. The Complainants through a Supplementary Affidavit sworn on 4th March 2024 have reiterated that their certificate of title remains unchallenged and hence it is prima facie evidence of the ownership of the suit property. This is true. However, it is also true that even though a certificate of title and a search thereof is the primary proof of ownership of land, the same can be successfully challenged if it was obtained fraudulently or transferred from a person who didn't have a better title than he passed.
16. Indeed, Section 127 of the Land Act as read together with Section 133C (6) gives the Respondent the power to file a reference before the Tribunal, on a matter relating to compulsory acquisition, any question that touches on:
- a. The construction, validity or effect of any instrument;
 - b. The persons who are interested in the land concerned;
 - c. The extent or nature of their interest;
 - d. The persons to whom compensation is payable;
 - e. The shares in which compensation is to be paid to tenants in common;
 - f. The question whether or not any part of a building is reasonably required for the full and unimpaired use of the building; or
 - g. The condition of any land at the expiration of the term for which it is occupied or used.
17. We, therefore, note that there are available mechanisms for the Respondent to utilize to establish any questions as to ownership of property even after the process of compulsory acquisition has been completed. Indeed, this is a duty that the Respondent should take seriously to avoid unnecessary disputes arising later on in case the rightful owner of property is not paid. Importantly, it is a duty that the Respondent should take seriously to safeguard public finances in a case where the land that has been compulsorily acquired may end up being public land.
18. We do find that the Respondent's inaction are tantamount to dereliction of duty in exercise of its mandate. It is unfortunate that the Respondent is prepared to do nothing as long as a letter objecting to payment of compensation has been received by itself. If indeed the Respondent finds that an objection impugns its own due diligence and raises questions that would need resolution by the Tribunal, it is incumbent upon the Respondent to refer the same to the Tribunal without delay. We remind the Respondent that it has a duty to ensure that the rightful owners of property that has been compulsorily acquired are promptly compensated.
19. We therefore make a determination that pursuant to Section 133C (6) we are seized with jurisdiction to determine the question of ownership in regard to the suit property even as we determine this Complaint. We however note that the resolution of this question would require the participation of other parties who are currently not party to this suit but whose interests will be affected with that determination. To ensure that we reach a just and fair determination, we make the following orders, *suo motu*:



- a. That the Ministry of Agriculture & Livestock Development be joined in these proceedings as an Interested Party, forthwith;
- b. That the Ministry of Agriculture & Livestock Development to file an affidavit in regard to its letter to the Respondent dated 14th February 2022 [Ref. MLD/Land/I/I Vol 5(137)] on the subject of the suit property within Twenty-One (21) days hereof;
- c. That the Ethics and Anti-Corruption Commission be joined in these proceedings as an interested party, forthwith;
- d. That the Ethics and Anti-Corruption Commission to conduct an inquiry pursuant to its mandate under Section 11(1)(j) of the *Ethics and Anti-Corruption Commission Act*, 2011 to ascertain the allegations contained in the Ministry of Agriculture & Livestock Development letter dated 14th February 2022;
- e. That the Ethics and Anti-Corruption Commission to file and serve a report before the Tribunal on the inquiry in (d) above within a period of Twenty-One (21) days;
- f. The Complainants shall be at liberty to file a further affidavit within Three (3) days upon being served with the affidavit in (b) and the report in (e) above;
- g. That the Complainants shall serve these directions upon the Ministry of Agriculture & Livestock Development and the Ethics and Anti-corruption Commission forthwith;
- h. That the period for determination of this dispute is hereby extended by Ninety (90) days considering the above;
- i. Mention for further directions on 22nd April 2024;
- j. There shall be no order as to costs.

DATED AND DELIVERED VIRTUALLY AT NAIROBI THIS 25TH DAY OF MARCH 2024.

.....

DR. NABIL M. ORINA

CHAIRPERSON

Before:

Ms. Wanjala for the Complainants

No Appearance for the Respondent

Everlyne – Court Assistant

