



**Ndurya (Suing as a Legal Representative of the Estate of Alex Ndurya Boma (Deceased))  
v Kenya Railways Corporation & 5 others (Land Acquisition Case E017, E018, E020,  
E021 & E024 of 2024 (Consolidated)) [2024] KELAT 1660 (KLR) (2 December 2024) (Judgment)**

Neutral citation: [2024] KELAT 1660 (KLR)

**REPUBLIC OF KENYA  
IN THE LAND ACQUISITION TRIBUNAL  
LAND ACQUISITION CASE E017, E018, E020, E021 & E024 OF 2024 (CONSOLIDATED)  
NM ORINA, CHAIR & G SUPEYO, MEMBER  
DECEMBER 2, 2024**

**BETWEEN**

**MDOE NDURYA ..... PLAINTIFF  
SUING AS A LEGAL REPRESENTATIVE OF THE ESTATE OF ALEX NDURYA  
BOMA (DECEASED)**

**AND**

**KENYA RAILWAYS CORPORATION ..... 1<sup>ST</sup> DEFENDANT  
NATIONAL LAND COMMISSION ..... 2<sup>ND</sup> DEFENDANT  
NAHENZA NYANJE ..... 3<sup>RD</sup> DEFENDANT  
CHIZI NAHENZA ..... 4<sup>TH</sup> DEFENDANT  
MGAZA NAHENZA ..... 5<sup>TH</sup> DEFENDANT  
EMMANUEL NYANJE NAHENZA ..... 6<sup>TH</sup> DEFENDANT**

**JUDGMENT**

**Background**

1. This matter relates to five different suits that were consolidated by consent of the parties on 11<sup>th</sup> July 2024. The claims arise from the acquisition of various parcels of land which formed part of land known as Kwale/South Samburu/58 registered under the South Samburu Group Ranch. These parcels of



land were acquired for the construction of the Mombasa – Nairobi Standard Gauge Railway on various dates in 2014 and 2015.<sup>1</sup>

2. The project affected persons for purposes of payment of compensation were indicated in a schedule sent to the 1<sup>st</sup> Defendant and together with their corresponding parcels of land and amount. These parcels of land were identified through serial numbers. Relevant to this matter, in a letter dated 5<sup>th</sup> August 2015, the 2<sup>nd</sup> Respondent forwarded a schedule to the 1<sup>st</sup> Defendant advising the first Defendant to make payments as follows:

S/No. Correct Payee Amount

318 Banzi Gunda Banzi 103,960.00

322 Banzi Gunda Banzi 77,280.00

329 Banzi Gunda Banzi 841,494.00

332 Alex Ndurya Boma 872,563.00

334 Alex Ndurya Boma 153,651.00

3. Prior to this, the 2<sup>nd</sup> Defendant had written a letter to the 1<sup>st</sup> Defendant advising it to withhold payments in regard to parcels of land serialized as 318, 322, 329, 330, 332, 333, 334, and 335 because the initially identified payees had been disputed by other interested parties. This was through a letter dated 9<sup>th</sup> May 2015.

### **The Plaintiff's Case**

4. In suit no. TRLAP/E017/2024, the Plaintiff contends that his deceased father, Alex Ndurya Boma, was a member of the South Samburu Group Ranch and was the bonafide owner of all that parcel of land identified by serial numbers 332 measuring 1.315 Ha (suit property). It is the Plaintiff's case that his late father learnt that another person had lodged a claim for compensation in regard to this property which prompted him to lodge a dispute with the 2<sup>nd</sup> Defendant through the area chief and the Assistant County Commissioner.
5. This complaint prompted the area chief and the Assistant County Commissioner to write to the 2<sup>nd</sup> Defendant on 15<sup>th</sup> April 2015 informing the 2<sup>nd</sup> Defendant that a dispute had been lodged by the deceased over a number of disputed parcels of land.
6. Consequently, the Plaintiff avers, the 2<sup>nd</sup> Defendant advised the 1<sup>st</sup> Defendant via a letter dated 9<sup>th</sup> May 2015 to withhold payments with respect to the suit property until the issue of ownership was resolved.
7. It is the Plaintiff's contention that despite the 2<sup>nd</sup> Defendant advising the 1<sup>st</sup> Defendant that the dispute had been resolved in favour of the deceased and asking the 1<sup>st</sup> 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.
8. The Plaintiff, therefore, seeks judgement for the sum of Kshs. 872,562.00 being the award given in regard to the parcel of land serialized as no. 332, special damages, interest and costs.

<sup>1</sup> Gazette Notice No. 724 of 7<sup>th</sup> February 2014 and Gazette Notice No. 4096 of 20<sup>th</sup> June 2014 identifying land known as KWALE/SOUTH SAMBURU/58 belonging to South Samburu Group Ranch measuring approximately 102.611 hectares. Subsequently, the 2<sup>nd</sup> Defendant also published Gazette Notice No. 5503 of 8<sup>th</sup> August 2014 being a notice of inquiry in respect of, among others, the said KWALE/SOUTH SAMBURU/58.



9. In suit no. TRLAP/E020/2024, the Plaintiff reiterates the background in suit no. TRLAP/E017/2024 and avers that the parcel of land serialized as no. 334 belonged to his deceased father and the same was a subject of a dispute which was resolved in favour of his father by the area chief and the Assistant County Commissioner. This was confirmed by the 2<sup>nd</sup> Defendant's letter dated 5<sup>th</sup> August 2015 identifying the deceased as the correct payee and asking the 1<sup>st</sup> Defendant to make payment of Kshs. 153,651.00 to the deceased.
10. The Plaintiff therefore prays for a declaration that the estate of the deceased is entitled to compensation for the compulsory acquisition of parcel of land identified by serial no. 334 and measuring 0.232 Ha, judgement for the sum of Kshs. 153,651.00, special damages, interest and costs.
11. In suit nos. TRLAP/E018/2024, TRLAP/E021/2024 and TRLAP/E021/2024 the Plaintiff reiterates the background in suit no. TRLAP/E017/2024 but avers that in regard to parcels of land serialized as 333, 335 and 330 which measured 0.905 Ha, 1.295 Ha, and 1.344 Ha, respectively, the 2<sup>nd</sup> Defendant failed to communicate the resolution of the disputes in regard to these parcels of land by the area chief and the Assistant County Commissioner in its advise to the 1<sup>st</sup> Defendant to make payments. It is contended that in the letter dated 5<sup>th</sup> August 2015, the 2<sup>nd</sup> Defendant omitted to include the resolution of the disputes in regard to parcel nos. 333, 335 and 330 when advising the 1<sup>st</sup> Defendant to make payments.
12. The Plaintiff, therefore, seeks a declaration that the Plaintiff is the rightful payee of Kshs. 587,176.00, Kshs. 835,436.00, and Kshs 883,016 which were the determined values of land parcel nos. 333, 335, and 330, respectively, special damages, interest, and costs.

#### **The 1<sup>st</sup> Defendant's Response**

13. The 1<sup>st</sup> Defendant responded to the Plaint via a statement of Defence dated 14<sup>th</sup> June 2024. The 1<sup>st</sup> 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 2<sup>nd</sup> Defendant's mandate. The 1<sup>st</sup> Defendant avers that pursuant to a Parliamentary directive, the 1<sup>st</sup> Defendant submitted all funds for compensation to the 2<sup>nd</sup> Defendant and all the payments were henceforth done by the 2<sup>nd</sup> Defendant.
14. The 1<sup>st</sup> Defendant, however, avers that the Plaintiff has not presented the requisite documents to the 2<sup>nd</sup> Defendant for purposes of compensation. It is, further, the 1<sup>st</sup> Defendant's case that there has been no evidence that has been adduced to demonstrate ownership of the suit property.

#### **The 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, and 6<sup>th</sup> Response**

15. The 2<sup>nd</sup> Defendant participated in these proceedings but did not file a response despite being granted additional time to do so. The 4<sup>th</sup> – 6<sup>th</sup> Defendants did not take part in these proceedings despite being served.

#### **Viva Voce Evidence**

16. At the hearing conducted on 11<sup>th</sup> August 2024, the Plaintiff presented one witness, PW1. PW1 was Mr. Suleiman Mundu, the area Chief, Samburu Location. Mr. Mundu adopted his witness statement dated 25<sup>th</sup> May 2024 and sought to rely on it as his evidence in chief.
17. Mr. Mundu's stated in his testimony that he knew the complainant and his late father Mr. Alex Ndurya Boma.



18. In regard to the matters in issue, Mr. Mundu stated that he was the guide in 2015 when the 2<sup>nd</sup> Defendant sought to acquire land on behalf of the 1<sup>st</sup> Defendant. During the survey, Mr. Mundu testified, there was a suggestion that payments be made to the Ranch which was the title holder but this suggestion was rejected by the owners of the parcels of land. It was at this point that the 2<sup>nd</sup> Defendant embarked on an exercise to identify the individual owners of the affected parcels of land.
19. During this exercise, Mr. Mundu testified, it was discovered that some third parties had laid claim to parcels of land that did not belong to them. The late Alex Ndurya Boma lodged a complaint before his office concerning other parties who had laid claim to his parcels of land.
20. Mr. Mundu testified that upon receipt of these complaints, he wrote to the 2<sup>nd</sup> Defendant to stop payments to four other parties who had laid claim to the disputed parcels of land pending the resolution of the dispute. He later called the parties to his office and the dispute was subjected to the elders who had information about the areas in dispute. Mr. Mundu's testimony was to the effect that the dispute resolution exercise found in favour of Mr. Alex Ndurya Boma.
21. Upon the completion of this exercise, Mr. Mundu wrote a letter dated 28<sup>th</sup> July 2015 to the 2<sup>nd</sup> Defendant which he relied on in his evidence in chief.
22. On cross-examination by Ms. Muriranga for the 1<sup>st</sup> Defendant, Mr. Mundu stated that in the dispute resolution exercise he called both parties who had an interest in the disputed parcels of land together with witnesses. It was also his testimony that there were community boundaries within the ranch identifying different parcels of land.
23. He further testified, on cross-examination by Ms. Muriranga, that the whole parcel in dispute belonged to Mr. Boma although the same had been identified in smaller portions by serial numbers during the acquisition.
24. The witness was further cross-examined by Mr. Mbuthia on behalf of the 2<sup>nd</sup> Defendant. The witness testified that the dispute had been brought to his office in the year 2015 and it was to the effect that Mr. Boma's parcel of land which had been acquired had been apportioned to other parties for compensation. The dispute pitted two families being the Nahenza family and the Boma family. In his testimony, the witness stated that the Nahenza family was tilling the parcel of land in dispute but did not own it.
25. Mr. Mundu further stated, under cross-examination by Mr. Mbuthia, that before the SGR project, people were living communally in the ranch. Although Mr. Boma was not related to Nahenza, the latter's family was tilling the parcel of land which was affected by the acquisition. The Nahenza family had, however, not built any structures on the parcel of land in dispute.
26. On further cross-examination, Mr. Mundu stated that he did not have the proceedings for the meeting called to resolve the dispute. He also could not recall the names of the witnesses who appeared but confirmed that the village elder was present. He further testified that all the parties had come from the same village and he had used the village elder to summon them. In this meeting, Mr. Mundu testified, the ranch officials being - the Vice Chair, Secretary and other members were present.
27. Questioned on how he resolved the dispute, Mr. Mundu testified that neighbours to both parties who appeared as witnesses provided significant evidence to determine who owned the parcels of land. Further, Mr. Mundu testified that any party who was dissatisfied with his determination was advised to escalate the dispute to other forums. In this case, Mr. Mundu testified, upon resolution of the dispute, the Nahenza family voluntarily moved from the disputed parcels of land. He also testified that the



- Nahenza family who were also members of the ranch owned a parcel of land a few plots away from the parcel in dispute.
28. On re-examination by Mr. Maitha for the Plaintiff, Mr. Mundu stated that the serial numbers used for identification of the parcels of land were not plot numbers but rather serial numbers for identification.
  29. On the question of the parcel of land in dispute, Mr. Mundu clarified that it is common for the Durumas to allow other people to till their land but the same does not confer ownership or any other rights over it.
  30. Finally, Mr. Mundu testified that he conveyed the resolution of the dispute to the 2<sup>nd</sup> Defendant who acted on it by instructing the 1<sup>st</sup> Defendant to make payments to the late Mr. Boma.
  31. PW2 was the Plaintiff, Mdoe Ndurya. His testimony was taken on 19<sup>th</sup> August 2024. Mr. Ndurya adopted his witness statement dated 29<sup>th</sup> May 2024 and sought to rely on it as his evidence in chief.
  32. On cross-examination by Ms. Muriranja, Mr. Ndurya stated that his late father did not have ownership documents in regard to the parcels of land in question. He also testified that no award had been issued in regard to the said parcels of land.
  33. On re-examination, Mr. Ndurya clarified that they had been given a letter to show that they were supposed to be paid. This is the letter dated 5<sup>th</sup> August 2024.
  34. This marked the end of the Plaintiff's case.
  35. The 1<sup>st</sup> Defendant presented Mr. Nathaniel Ochieng, a Senior Land Surveyor working for the 1<sup>st</sup> Defendant, as its witness. Mr. Ochieng adopted his statement dated 25<sup>th</sup> July 2024 and also relied on the 1<sup>st</sup> Defendant's list of documents of the same date. In his witness statement, Mr. Ochieng reiterates the defence and asserts that the 1<sup>st</sup> Defendant is not responsible for effecting compensation as per the law and the Parliamentary directive in the year 2016. Mr. Ochieng nevertheless notes that the Plaintiff has never presented any ownership documents to support his claim for compensation.
  36. On cross-examination by Mr. Maitha, counsel for the Plaintiff, Mr. Ochieng confirmed that he had testified in another case before the tribunal being – Said Mwero and another vs. Kenya Railways Corporation and National Land Commission. Mr. Ochieng was directed to read page 18 of the proceedings in that case in regard to his testimony. Mr. Ochieng confirmed that he had indicated in his previous testimony that the 1<sup>st</sup> Defendant was not responsible with resolving ownership disputes as that lied with the 2<sup>nd</sup> Defendant or the Ministry of Lands.
  37. Mr. Ochieng further testified under cross-examination that the 1<sup>st</sup> Defendant could not challenge a finding of a resolution of a dispute and that the 2<sup>nd</sup> Defendant is the determinant of the correct payee.
  38. Mr. Ochieng further testified that via a Parliamentary directive, funds for compensation were released by the 1<sup>st</sup> Defendant to the 2<sup>nd</sup> Defendant. He, however, could not point to any document that had been filed to confirm this.
  39. On re-examination, Mr. Ochieng clarified that the role of the 1<sup>st</sup> Defendant was to inform the Cabinet Secretary on the need for an acquisition and to also provide funds. In this case, the funds had been sent to the 2<sup>nd</sup> Defendant. He also stated that he was not aware if there are any outstanding payments that should be submitted to the 2<sup>nd</sup> Defendant.



## Analysis and Determination

40. The Plaintiff and the 1<sup>st</sup> Defendant have filed submissions where they invite us to determine whether the Plaintiff is entitled to the orders sought. The 1<sup>st</sup> Defendant has also asked us to determine whether the suit is time barred. It is that issue that necessitates our attention, preliminarily.
41. It is the 1<sup>st</sup> Defendant's argument that the suit offends the provisions of Section 87(b) of the [Kenya Railways Corporation Act](#) (Cap 397) which is to the effect that, "... legal proceedings shall not lie or be instituted unless it is commenced within twelve months next after the act, neglect or default complained of..."
42. In response, the Plaintiff submits that the objection is untenable because the suit before the tribunal is for the violation of the [Land Act](#) and Article 40 of [the Constitution](#). Consequently, the Plaintiff submits, the issue does not in any way concern the rights under the [Kenya Railways Corporation Act](#).
43. We note that the Plaintiff's claim is entirely against the 2<sup>nd</sup> Defendant on the subject matter of compensation. Although the 1<sup>st</sup> Defendant has been joined in these proceedings, the orders sought do not affect them directly. We place reliance on the Environment and Land Court (L.L. Naikuni, J.) decision in *Geyser International Assets Limited vs. Attorney General & 3 Others* [2021] eKLR where the court held as follows:

...the law does impose the full responsibility on payment to the National Land Commission and nobody else. Where the National Land Commission fails to do so and land is possessed by the acquiring authority before payment is made the obligations to ensure payment is made falls squarely on the commission...In this case the 2<sup>nd</sup> and 4<sup>th</sup> Respondents notwithstanding being the acquiring body is immaterial they cannot be liable and hence the law does not impose any responsibility on them.

44. Although we do not feel that it is necessary to engage with the objection raised by the 1<sup>st</sup> Defendant due to clear cut mandate of the 2<sup>nd</sup> Defendant, we find that there was necessity of the 1<sup>st</sup> Defendant's inclusion in this lawsuit for the reason that at the time the subject acquisition happened, some of the payments were made directly by the 1<sup>st</sup> Defendant. For that reason, we find that the objection raised pursuant to the provisions of Section 87(b) of the [Kenya Railways Corporation Act](#) (Cap 397) cannot defeat the Plaintiff's claim which stems from the rights under Article 40 of [the Constitution](#) and the [Land Act](#).
45. On the question whether the Plaintiff is entitled to the orders sought, both parties agree on the background facts underpinning this case. The question whether the Plaintiff is entitled to compensation in the manner pleaded necessitates the reiteration of the process of compulsory acquisition. 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

85. In summary, the process of compulsory acquisition now runs as follows.
86. Under Section 107 of the [Land Act](#), the National Land Commission (the 1<sup>st</sup> 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.

87. 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.
  88. 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](#).
  89. The foregoing process constitutes the preliminary or pre-inquiry stage of the acquisition.
  90. 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.
  91. 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.
  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](#).
  93. 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](#).
46. It is not in contention that the 2<sup>nd</sup> Defendant acting on behalf of the 1<sup>st</sup> Defendant acquired, among others, several parcels of land forming part of the South Samburu Group Ranch for purposes of the construction of the Mombasa-Nairobi Standard Gauge Railway. It is also not in contention that at the time of this acquisition, the land known as Kwale/South Samburu/58 had not been subdivided.
  47. The evidence also shows that the 2<sup>nd</sup> Defendant embarked on identifying the owners of the specific parcels of land which had been earmarked for acquisition. These parcels of land were identified by serial numbers for purposes of ascribing the specific owners to them. The evidence also demonstrates that the 2<sup>nd</sup> Defendant sent schedules to the 1<sup>st</sup> Defendant identifying persons who were to be compensated in regard to the specific parcels of land which had been identified by serial numbers.



48. The five lawsuits consolidated herein arise from the acquisition of parcels of land forming part of Kwale/South Samburu/58 and identified by serial nos. 330, 332, 333, 334, and 335. These parcels of land formed part of the parcels of land whose ownership had been disputed after the 2<sup>nd</sup> Defendant had identified the owners. Consequently, the 2<sup>nd</sup> Defendant through a letter dated 9<sup>th</sup> May 2015 advised the 1<sup>st</sup> Defendant to withhold any payments in regard to these parcels of land until the disputes concerning ownership had been resolved.
49. The evidence is also uncontroverted that the local administration comprising of the area Chief who appeared as PW1 – Mr. Suleiman Mundu and the Assistant County Commissioner facilitated the resolution of disputes in regard to these parcels of land by the deployment of traditional dispute resolution mechanisms which involved the use of elders, calling of witnesses from the neighboring parcels of land and the officials of the South Samburu Ranch. Upon subjecting the dispute over ownership of these parcels of land to the local administration for resolution, it was also demonstrated in evidence that the dispute was resolved and the determination communicated by the Chief through letters dated 28<sup>th</sup> July 2015 and 4<sup>th</sup> August 2015. This resolution was confirmed by the 2<sup>nd</sup> Defendant who advised the 1<sup>st</sup> Defendant through the letter dated 5<sup>th</sup> August 2015 to make payments to one Alex Ndurya Boma in regard to parcel nos. 332 and 334. The letter, however, does not indicate the fate of parcel nos. 330, 333 and 335.
50. The 2<sup>nd</sup> Defendant does not indicate why the resolution of the dispute in regard to these three parcels of land was not communicated to the 1<sup>st</sup> Defendant. In our analysis of evidence, we are satisfied that the determination of the dispute by the Chief in regard to all the five parcels of land was satisfactory. There is no material that has been placed before us to show that the dispute was escalated any further. The Defendants against whom this determination was made were joined in these proceedings but did not file any document.
51. The instant suits are similar to another suit that was determined by this tribunal on 27<sup>th</sup> May 2024. In that matter - Gunda (Suing as a legal representative of the Estate of Banzi Gunda Banzi (Deceased) v Kenya Railways Corporation & another [2024] KELAT 677 (KLR), we stated as follows in regard to the process undertaken by the 2<sup>nd</sup> Defendant after the publication of a notice of intention to acquire and before making an award:

“26. ...the 2<sup>nd</sup> 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.<sup>2</sup>

27. It is, however, the case that even where this process has been conducted, a party dissatisfied with the determination of the 2<sup>nd</sup> Defendant following an enquiry can challenge the finding on interests affected or the amount of compensation

<sup>2</sup> Para. 52.





to be awarded. In a case where the 2<sup>nd</sup> Defendant's determinations are disputed, the 2<sup>nd</sup> Defendant would rightfully withhold payments pending resolution of such disputes..."

52. We also reiterate our findings in Gunda in regard to the manner of resolving ownership disputes in this acquisition as follows:

"28. ...We are satisfied that the dispute was satisfactorily resolved through alternative dispute resolution and the correct payee identified in regard to the suit properties. 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."

53. We are at a loss why the 2<sup>nd</sup> Defendant has not effected compensation on the estate of the late Alex Ndurya Boma despite having acquired his land ten years ago. The situation of unadjudicated land is not unique and it should not be an excuse for the 2<sup>nd</sup> Defendant not to perform its duties. Indeed, the law contemplates a situation where interests to land can be ascertained even in the absence of registration. For instance, Section 107A (12) of the [Land Act](#) 2012 provides as follows:

Despite Subsection (10), where boundaries of land are ascertainable, prompt payment in full, of just compensation may be made to occupants in good faith in the case of: -

- a. Land lawfully held, managed or used by individuals or families as ancestral land; or
- b. Land traditionally occupied by individuals, families or entities pending adjudication.

54. Further, as we held in Gunda, the law does not discriminate against unregistered land:

"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.

...

34 ...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 2<sup>nd</sup> Defendant to come up with structures that recognize a differentiated approach to proving ownership for unsurveyed and unregistered land.”

55. We must again deprecate the double standards employed by the 2<sup>nd</sup> Defendant as we did in Gunda as follows:

“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 2<sup>nd</sup> 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 1<sup>st</sup> Defendant...”

56. Our analysis leads to the inevitable conclusion that the late Alex Ndurya Boma was the bonafide owner of parcels of land identified by serial nos. 330, 332, 333, 334, and 335 and was entitled to compensation following their acquisition for the benefit of the 1<sup>st</sup> Defendant. The estate of the late Alex Ndurya Boma is, therefore, entitled to be paid such compensation together with interest accrued over the years since the acquisition.

57. For the above reasons, we find that the Plaintiff’s case is merited and the same is allowed as follows:

- a. An order is hereby issued directing the 2<sup>nd</sup> Defendant to pay the Plaintiff the sum of Kshs. 3,331,841.00 being compensation for acquisition of land referenced by serial numbers 330, 332, 333, 334, and 335 which acquisition was effected through Gazette Notice No. 724 of 7<sup>th</sup> February 2014 and Gazette Notice No. 4096 of 20<sup>th</sup> June 2014;
- b. Interest on (a) at court rates from 20<sup>th</sup> June 2014 until payment in full;
- c. Special damages of Kshs. 75,000.00;
- d. Costs to be borne by the 2<sup>nd</sup> Defendant;
- e. Interest on (c) and (d) at court rates from the date of this judgement until payment in full;

**DATED AND DELIVERED VIRTUALLY AT NAIROBI THIS 2<sup>ND</sup> DAY OF DECEMBER 2024.**

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

**GEORGE SUPEYO - MEMBER**

Before: -

Maitha for Plaintiff

Ms. Muriranjia for the 1<sup>st</sup> Defendant



N/A for The 2<sup>nd</sup> Defendant

Wycliffe – C/A

