



REPUBLIC OF KENYA
IN THE LAND ACQUISITION TRIBUNAL AT NAIROBI
CASE NO. TRLAP/E102/2025

BETWEEN

BENARD OTIENO ANYUOR 1ST
APPLICANT
ANYUOR NICHOLAS ODHIAMBO 2ND
APPLICANT

AND

CHIEF EXECUTIVE OFFICER, NATIONAL IRRIGATION AUTHORITY 1ST
RESPONDENT
NATIONAL IRRIGATION AUTHORITY 2ND
RESPONDENT

AS CONSOLIDATED WITH
CASE NO. TRLAP/E10/2025

BETWEEN

GEORGE ODHIAMBO LAGO
APPLICANT

AND

CHIEF EXECUTIVE OFFICER, NATIONAL IRRIGATION AUTHORITY 1ST
RESPONDENT
NATIONAL IRRIGATION AUTHORITY 2ND
RESPONDENT

AS CONSOLIDATED WITH
CASE NO. TRLAP/E104/2025

BETWEEN

ISAAC OGAL AKURA
APPLICANT

AND

CHIEF EXECUTIVE OFFICER, NATIONAL IRRIGATION AUTHORITY 1ST
RESPONDENT
NATIONAL IRRIGATION AUTHORITY 2ND
RESPONDENT

AS CONSOLIDATED WITH
CASE NO. TRLAP/E105/2025

BETWEEN

PETER ODHIAMBO AKURA
APPLICANT

AND

CHIEF EXECUTIVE OFFICER, NATIONAL IRRIGATION AUTHORITY **1ST**
RESPONDENT

NATIONAL IRRIGATION AUTHORITY **2ND**
RESPONDENT

AS CONSOLIDATED WITH
CASE No. TRLAP/E106/2025

BETWEEN

EZRA OPIYO NGOJE.....
APPLICANT

AND

CHIEF EXECUTIVE OFFICER, NATIONAL IRRIGATION AUTHORITY **1ST**
RESPONDENT

NATIONAL IRRIGATION AUTHORITY **2ND**
RESPONDENT

AS CONSOLIDATED WITH
CASE No. TRLAP/E107/2025

BETWEEN

PAMELA ATIENO NYAOKE
APPLICANT

AND

CHIEF EXECUTIVE OFFICER, NATIONAL IRRIGATION AUTHORITY **1ST**
RESPONDENT

NATIONAL IRRIGATION AUTHORITY **2ND**
RESPONDENT

AS CONSOLIDATED WITH
CASE No. TRLAP/E108/2025

BETWEEN

PIUS AMOLO OOKO
APPLICANT

AND

CHIEF EXECUTIVE OFFICER, NATIONAL IRRIGATION AUTHORITY **1ST**
RESPONDENT

NATIONAL IRRIGATION AUTHORITY **2ND**
RESPONDENT

AS CONSOLIDATED WITH
CASE No. TRLAP/E109/2025

BETWEEN

SOLOMON OWITI AKURA
APPLICANT

AND

CHIEF EXECUTIVE OFFICER, NATIONAL IRRIGATION AUTHORITY 1ST
RESPONDENT
NATIONAL IRRIGATION AUTHORITY 2ND
RESPONDENT

JUDGEMENT

A. BACKGROUND

1. This matter relates to eight (8) different suits instituted by the Applicants vide Judicial Review Applications brought pursuant to Rule 11 of the Fair Administrative Action Rules, 2024. The said motions are each dated 25th September 2025 and are supported by Affidavits sworn by the respective Applicants on even date.
2. The Applications have been consolidated as they relate to the satisfaction of costs awarded by this Tribunal in *Ngoje & 6 others v National Irrigation Authority & another (Tribunal Case E008, E004, E005, E006, E007, E009, E010 & E011 of 2024 (Consolidated)) [2024] KELAT 810 (KLR) (14 June 2024) (Judgment)* save for the amount in costs sought.

B. THE APPLICANTS' CASE

3. The Applicants successfully prosecuted their Claims in *Ngoje & 6 others v National Irrigation Authority & another (Tribunal Case E008, E004, E005, E006, E007, E009, E010 & E011 of 2024 (Consolidated)) [2024] KELAT 810 (KLR) (14 June 2024) (Judgment)* (“the initial Claim”) and were awarded various reliefs, including an award as to costs of the proceedings.
4. Whereas parties to the initial Claim were aggrieved by the judgement of the Tribunal and consequently instituted separate Appeals vide NAIROBI ELC CIVIL APPEAL NO. E090 OF 2024 and NAIROBI ELC APPEAL NO. E097 OF 2024, later NAIROBI CIVIL APPEAL E090 & E097 OF 2024 (CONSOLIDATED), the said decree and orders of this Tribunal in

relation to costs of the proceedings was never challenged on Appeal by either of the parties.

5. Accordingly, the said decree and order of this Tribunal was originally taxed by the Tribunal/Taxing Officer. Later, being aggrieved with the amounts as taxed originally, the Applicants herein successfully challenged their respective taxed amounts by way of reference at the Environment and Land Court (“the ELC Court”).
6. The ELC Court allowed the respective references and directed that the costs be taxed afresh. Upon fresh taxation, the Deputy Registrar to this Tribunal awarded further costs to the Applicants herein.
7. The Applicants herein proceeded to obtain Certificates of Order and Costs against Government and duly served them upon the Respondents herein alongside copies of the judgement in the initial Claim.
8. Further, the Applicants herein issued formal demands for payment to the Respondents.
9. Despite obtaining and serving upon the Respondents the requisite Certificate of Order and Costs against Government; and further according the Respondent reasonable time to comply with the demand, the Respondents have ignored, neglected and/or refused to pay the respective sums due to the Applicants. This situation has prompted the instant applications where the Applicants seek the following orders:
 - a. That the Respondents are bound but are in violation of articles 10, 47(1) (2) and 232 of the Constitution and that they are in breach of Section 4 of the Fair Administrative Actions Act for failure to pay the costs and that failure to give reasons for such inaction and conduct to the Applicant is a violation of his rights under Article 47(2) and Section 4(2) and (3) of the Fair Administrative Actions Act;

- b. A declaration that failure by the Respondents to make the payment due under the decree to the Applicants is a violation of the Applicants' rights guaranteed by Article 48 of access to justice, and violates the prescriptions of Section 4(3) of the Fair Administrative Actions Act and undermines judicial process and thus affects and is inimical to the public interest;
- c. A declaration that failure, refusal and neglect, and absent any written reasons, to comply with the provisions of Section 21(3) of the Government Proceedings Act by the Respondents and to pay the Applicants the costs of the proceedings in the initial claims as certified in the decrees and certificates of costs on record and as specified in the Certificates of Order for Costs against the Government dated 16th April 2025 as issued and served on the Respondents is a violation of the Applicants' rights to fair administrative actions, violates the constitution and statute law;
- d. Judicial review orders of mandamus compelling the Respondents to pay the Applicants as follows: Kshs. 363, 382.00 (TRLAP/E102/2025), Kshs. 357,793.00 (TRLAP/E103/2025), Kshs, 356,675.00 (TRLAP/E104/2025), Kshs. 356,675.00 (TRLAP/E105/2025), Kshs. 356,675.00 (TRLAP/E106/2025), Kshs. 356,675.00 (TRLAP/E107/2025), Kshs. 356,675.00 (TRLAP/E108/2025), Kshs. 356,675.00 (TRLAP/E109/2025) being the certified costs and interest in terms of the judgement and decree of this tribunal dated 14 June 2024 issued in the initial claims and the ruling and order dated 20 March 2025 and the certificates of costs dated 15 April 2025;
- e. Interest on the above sums at the rate of 14% per annum with effect from 16 April 2025 until payment in full;

- f. Compensatory damages for violation of the rights under Article 47(1) and (2) of the constitution and for breach of the requirements of fair administrative actions in relation to the payment of the costs in the initial claims; and
- g. Costs of these applications.

C. THE RESPONDENTS' CASE

10. The 1st and 2nd Respondent have jointly filed a Notice of Preliminary Objection to the Applicants' Applications on grounds that the Applications offend the provisions of Sections 8 and 9 of the Law Reform Act (Cap 26) which grant only the High Court powers to issue orders of mandamus, prohibition and certiorari.
11. Further, the Respondents argue that the respective Applications offend the provisions of Article 165 (6) and (7) of the Constitution of Kenya which vests the High Court with supervisory jurisdiction over subordinate courts and tribunals, empowering it to issue prerogative orders including mandamus, prohibition and certiorari.
12. It is the Respondent's contention, therefore, that this Tribunal, being a creature of statute under Section 133A of the Land Act, can only exercise jurisdiction strictly conferred by that statute and cannot arrogate to itself powers reserved for the High Court.
13. Consequently, the Respondents seek that the Applicants' respective Applications be struck out for lack of jurisdiction.
14. The Respondent's submissions were limited to the jurisdiction of this Tribunal and no further submissions were tendered in relation to the substantive Applications.

D. ANALYSIS AND DETERMINATION

15. The first issue for determination and satisfaction is jurisdiction before assessment whether the applications are merited. The Respondents have contested jurisdiction while the Applicants assert that the Tribunal has jurisdiction.
16. In their written submissions in support of the preliminary objection, the Respondents assert that this tribunal lacks jurisdiction to entertain an application seeking the judicial

review remedy of mandamus because such reliefs are constitutionally and statutorily reserved for the High Court. In support thereof, the Respondents rely on Section 8 and 9 of the Law reform Act which is to the effect that, “*The High Court shall have power to make orders of mandamus, prohibition and certiorari directed to any person or body exercising a public duty...*” The Respondents further rely on Order 53 of the Civil Procedure Rules, 2010 which requires a party to seek leave from the High Court before filing an application for an order of mandamus, prohibition or certiorari.

17. On their part, the Applicants contend that this tribunal is clothed with the necessary jurisdiction to determine the applications before it pursuant to Section 7(1) of the Fair Administrative Actions Act which allows any person aggrieved by an administrative action, inaction or decision to apply for judicial review to either a court or tribunal on grounds set out in Section 7(2) using the procedure set out in Section 9.

18. The instant applications arise from the provisions of the Government Proceedings Act. Section 21 (4) thereof prohibits enforcement against government in the ordinary way as follows:

Save as aforesaid, no execution or attachment or process in the nature thereof shall be issued out of any such court for enforcing payment by the Government of any such money or costs as aforesaid, and no person shall be individually liable under any order for the payment by the Government, or any Government department, or any officer of the Government as such, of any money or costs.

19. A party who seeks the satisfaction of an order or decree issued by a court can only do so through resort to judicial review. **In Republic vs. County Secretary, Nairobi City County & Another ex parte Wachira Nderitu Ngugi & Co. Advocates [2016] eKLR**, the court held thus:

“...the law as it stands presently is that no execution can be levied against the property of a Government in settlement of a decree in a civil case and hence the only recourse available to a decree holder is to apply for mandamus against the Chief Officer of the Government, and upon obtaining such orders, the decree holder will be at liberty to apply for committal of the Chief Officer if the order of mandamus is not complied with.”

20. It is that procedure which the Applicants have sought to invoke before this tribunal. I now turn to the relevant provisions that touch on this tribunal’s jurisdiction.

21. Section 133C (8) of the Land Act provides as follows:

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 Action Act or any other law.

22. In regard to this provision, the Tribunal has previously recognised that the same was enacted in the establishing law pursuant to the power of the legislature under Article 23(2) to enact legislation, in appropriate cases, to give original jurisdiction to subordinate courts similar to the one exercised by the High Court in enforcement of the Bill of Rights. In **Ngoje & 6 others v National Irrigation Authority & another [2024] KELAT 810 (KLR)**, the Tribunal held:

42. “...Section 133C (8) of the Land Act flows from the power of the legislature under Article 23(2) of the Constitution to enact legislation to give original jurisdiction in appropriate cases to subordinate courts to hear and determine applications for redress of a denial, violation or infringement of, or threat to, a right or fundamental freedom in the Bill of Rights under the Constitution. To provide more clarity, Article 162 of the Constitution of Kenya

states that the system of courts shall comprise of the Supreme Court, Court of Appeal, the High Court (and Courts of equal status), and subordinate courts established under Article 169 of the Constitution. On the other hand, Article 169 lists Magistrates courts, Kadhis' courts, Court martial, and any other local tribunal as shall be established through an Act of Parliament as subordinate courts. This tribunal, as established under the Land Act, is a subordinate court and exercises powers as such.”

23. Further, in **Muchai v National Land Commission [2025] KELAT 175 (KLR)** the Tribunal held that the applicant had invoked the correct procedure in approaching the Tribunal through an originating motion pursuant to Section 133C (8) of the Land Act and Rule 11 of the Fair Administrative Action Rules 2024. In that case, the Applicant successfully sought orders of judicial review to compel the National Land Commission to pay compensation following compulsory acquisition of his property.
24. Turning to the instant applications, the Applicants seek orders of judicial review to satisfy certificates of costs issued in the initial claims before this Tribunal. The question before me is whether the applications fit within the jurisdiction of the Tribunal under Section 133C (8) of the Land Act as read together with the Fair Administrative Actions Act and the rules thereunder.
25. The question of whether this Tribunal has jurisdiction to enforce the Bill of Rights has been answered in the affirmative in the initial claims and further confirmed by the ELC in **Ngoje & 7 others v National Irrigation Authority & another [2025] KEELC 771 (KLR)**. The Tribunal has also confirmed in **Muchai v National Land Commission [2025] KELAT 175 (KLR)** that it has powers to issue orders of judicial review pursuant to Section 133C (8) of the Land Act as read together with the Fair Administrative Actions Act.

26. It is important, however, that the Tribunal doesn't lose sight of the significant signposts for its jurisdiction under Section 133C (8). It is necessary to trace back the enabling legal provisions starting with the Constitution of Kenya. Article 23(2) of the Constitution signals an intention not to provide a carte blanche to the legislature by requiring Parliament to enact legislation to confer the enforcement jurisdiction exercised by the High Court to subordinate courts ***"in appropriate cases"***. The second consideration in exercise of this jurisdiction is the discretion afforded to the Tribunal. The use of the term ***"may"*** in Section 133C (8) of the Land Act connotes discretion requiring the exercise of this jurisdiction sparingly especially where there are other mechanisms of resolving the dispute. Further, in Parliament's wisdom, this jurisdiction has been given to this Tribunal but with a rider requiring the exercise of the jurisdiction only in ***"matters relating to compulsory acquisition of land."*** This is the third significant signpost that the Tribunal should never lose sight of. Lastly, it is a requirement under Section 133C (8) that the complaint must be ***"arising under Article 23(2) and 47(3) of the Constitution"***.

27. Considering this background, in assessing whether this Tribunal has jurisdiction to determine the applications before it, an application made under Section 133C (8) must satisfy a two-pronged test being that it is a matter relating to compulsory acquisition of land and that it is arising under Article 23(2) and 47(3) of the Constitution.

28. In regard to what amounts to "a matter relating to compulsory acquisition of land" this Tribunal in *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)* held as follows:

16. 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.*

29. The first test for exercise of jurisdiction requires the matter complained of to be connected to the process of compulsory acquisition of land. The applications before the Tribunal relate to enforcement of certificate of costs against the Respondents arising from the initial claims. Even though the initial claims related to compulsory acquisition of land, post-judgment proceedings for enforcement are not matters relating to the process of compulsory acquisition of land. In any case, these proceedings are separate legal proceedings which are not connected to the process of compulsory acquisition of land. The applications, therefore, fail to satisfy the first test.

30. Similarly, the Applicants have not demonstrated that proceedings for enforcement of certificates of costs against the Respondents arise under Article 23(2) and 47(3). Even though the Constitution of Kenya establishes a path for seeking judicial review in enforcement of the Bill of Rights through the Fair Administrative Actions Act and the rules thereof, this procedure has not subsumed the power of the High Court to issue prerogative writs of judicial review to supervise the exercise of administrative authority. The Supreme Court in ***Dande & 3 others v Inspector General, National Police Service & 5 others [2023] KESC 40 (KLR)*** recognizes the existence of the two paths as follows:

87...The dual approach to judicial review does exist as we have stated above but that approach must be determined based on the pleadings and procedure adopted by parties at the inception of proceedings.

31. From the pleadings filed by the Applicants, the dispute is discernable as one of enforcement of various certificates of costs as against the Respondents. Although the Applicants have packaged the disputes as involving an enforcement of fundamental rights, it should not be lost that mere packaging does not transform the dispute to one for enforcement of fundamental rights where the substratum of the case is obviously not.
32. Further, the doctrine of constitutional avoidance cautions against the adjudication of a dispute as a constitutional dispute where the dispute may be properly adjudicated on another basis (See, Supreme Court of Kenya in **Communications Commission of Kenya & 5 others v Royal Media Services Ltd & 5 others [2014] KESC 53 (KLR)**, paras 256-258). I am persuaded that the instant dispute is one that calls for the application of this doctrine. The Applicants’ endeavor to enforce their awards of costs is not a constitutional issue. The same can be enforced through the judicial review path under Order 53 of the Civil Procedure Rules.
33. The upshot of the above analysis is that the Tribunal lacks jurisdiction to adjudicate over the Applications herein. They are hereby struck out with no orders as to costs in recognition that the Applicants are yet to reap the fruits of their success in the initial claims and they shouldn’t be burdened with more costs.

DATED AND DELIVERED VIRTUALLY AT NAIROBI THIS 8TH DAY OF DECEMBER, 2025

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DR. NABIL M. ORINA
CHAIRPERSON

IN THE PRESENCE OF:

MS. AWUOR FOR THE APPLICANTS

MS. WANYONYI H/B FOR MR. OCHOLA FOR THE RESPONDENTS

LUCY – COURT ASSISTANT