



REPUBLIC OF KENYA



**Mulu & 55 others v National Land Commission & 2 others (Land Acquisition
Petition E038 of 2024) [2025] KELAT 202 (KLR) (2 December 2025) (Judgment)**

Neutral citation: [2025] KELAT 202 (KLR)

**REPUBLIC OF KENYA
IN THE LAND ACQUISITION TRIBUNAL
LAND ACQUISITION PETITION E038 OF 2024
NM ORINA, CHAIR, G SUPEYO & RUTH OKAL, MEMBERS
DECEMBER 2, 2025**

BETWEEN

GEORGE MWANZIA MULU	1ST COMPLAINANT
ANASTACIA MARIAM MBITHI	2ND COMPLAINANT
SAMMY MWANTHI KYAI	3RD COMPLAINANT
ROSE KATUMBI	4TH COMPLAINANT
PHAREZ KAMBUA MATAKA	5TH COMPLAINANT
KAMUTI NDEMU	6TH COMPLAINANT
JOEL NYAMAI NDIVO	7TH COMPLAINANT
MUTUNGA MWANDIA	8TH COMPLAINANT
BEATRICE KOKI MUASYA	9TH COMPLAINANT
BENARD MUTINDA MUNYALA	10TH COMPLAINANT
PETER MWANGANGI KATIKU	11TH COMPLAINANT
KAUNDA MUNYALA	12TH COMPLAINANT
STEPHEN MASILA KIMANYI	13TH COMPLAINANT
FRANCIS MWANDUKA MBAI	14TH COMPLAINANT
PETRONILA TAABU MWANDUKA	15TH COMPLAINANT
SAMMY MUTEA	16TH COMPLAINANT
TITUS NZENGULA	17TH COMPLAINANT
RICHARD KYOSYA MUMINA	18TH COMPLAINANT
FELISTUS MUNYIVA KITHUKA	19TH COMPLAINANT



JOHN MUNUVE MULU	20 TH COMPLAINANT
MULI NZENGE	21 ST COMPLAINANT
GABRIEL KITILI NZUNGU	22 ND COMPLAINANT
LOISE SYOMBUA MULA	23 RD COMPLAINANT
MALALU MAKAU KATU	24 TH COMPLAINANT
ELIZABETH NGANA NTHENGE	25 TH COMPLAINANT
JOHN MUTUA MULI	26 TH COMPLAINANT
NZEMBI KYALUMA	27 TH COMPLAINANT
NDUKU KISYULA	28 TH COMPLAINANT
FRANCIS KIMANYI	29 TH COMPLAINANT
NZISA KITHOI	30 TH COMPLAINANT
PIUS NZOMO MUTIA	31 ST COMPLAINANT
ONESMUS MUEMA KILUKI	32 ND COMPLAINANT
KASUNGWA MUNYOKI	33 RD COMPLAINANT
JACOB MBAI MBITI	34 TH COMPLAINANT
MUSINGILA MAUNDU	35 TH COMPLAINANT
DAVID KAKAI	36 TH COMPLAINANT
NDANA DAVID	37 TH COMPLAINANT
FRANCIS MBILI MUSELELA	38 TH COMPLAINANT
DAVID WAMBUA	39 TH COMPLAINANT
MWANGO MWINZILA	40 TH COMPLAINANT
KATHINI WILLY	41 ST COMPLAINANT
JUDITH NDUKU	42 ND COMPLAINANT
BERITA KETHI SIMON	43 RD COMPLAINANT
ELIZABETH KITHOI	44 TH COMPLAINANT
BENARD HAMISI	45 TH COMPLAINANT
JAMES KILONZI NGUU	46 TH COMPLAINANT
ROBERT KYUMA	47 TH COMPLAINANT
JACKSON MWENGI	48 TH COMPLAINANT
JOSEPH MWENDANDU	49 TH COMPLAINANT
AGNETA MWENDE NYAMAI	50 TH COMPLAINANT
CHRISTINE MBURU	51 ST COMPLAINANT



SAMUEL KAMOYA 52ND COMPLAINANT
NICODEMUS MAILU MBUVI 53RD COMPLAINANT
DERRICK KINYUNGU DENNIS 54TH COMPLAINANT
ANNAH DENNIS 55TH COMPLAINANT
NANCY MWONGELI 56TH COMPLAINANT

AND

NATIONAL LAND COMMISSION 1ST RESPONDENT
KENYA NATIONAL HIGHWAYS AUTHORITY 2ND RESPONDENT
THE HON ATTORNEY GENERAL 3RD RESPONDENT

JUDGMENT

A. Background

1. This matter relates to a Complaint dated 9 August 2024 challenging the compulsory acquisition of parcels of land said to be required for the Kibwezi–Mutomo–Kitui–Migwani road project (the project). The Complainants’ case is premised on allegations of breaches of their constitutional rights arising from the compulsory acquisition, including alleged violations of Articles 27, 35, 40, 47 and 50 of the *Constitution*.
2. The acquisition process was initiated by the 2nd Respondent and advanced through a number of Gazette notices issued between 2018 and 2022 by the 1st Respondent. The Respondents’ position is that these gazette notices, the schedules of payments filed before this Tribunal, and the various letters of acceptance on record are demonstrative of the sequential steps in the statutory process of acquisition. According to the 1st and 2nd Respondents, the compulsory acquisition in respect to the Claimants’ parcels proceeded in accordance with the law.
3. Specifically, the 1st Respondent acknowledges that it received partial funds for compensation from the 2nd Respondent in the sum of Kshs. 365,393,906, and that the 2nd Respondent has disbursed payments to some Project Affected Persons (PAPs). There are requisitions and letters seeking additional funds on record, which indicate that the 1st Respondent sought further disbursements, including some Kshs. 814,721,990, to meet outstanding awards for a total of 3,557 PAPs identified for the project. However, the 1st Respondent only received part of the required funds and several PAPs remain unpaid.
4. The foregoing notwithstanding, it is alleged that the 2nd Respondent took effective possession of the suit parcels shortly after gazettment. In the Complainants’ view, this constitutes a deprivation of their proprietary rights without the constitutionally entrenched prompt, full and just compensation.
5. As a result, the Complainants have moved this Tribunal to declare the Respondents’ actions as being contrary to their rights, and have invited us to grant them the amounts they seek as compensation, together with damages and interest.



B. The Complainants' Case

6. The Complainants contend that they are owners or lawful occupiers of the parcels listed in the complaint (the suit properties) and that the acquisition process denied them the protections the Constitution and the Land Act guarantee. They claim denial of equality, property rights, fair administrative action, prompt and adequate compensation and access to a remedy. As a result, they seek for declarations of illegality and orders for prompt and full compensation to ameliorate their predicament.
7. The Complainants contend that the taking of possession occurred on or about the date of gazette and that statutory timelines for payment were not observed. In the rush to take possession and issue awards without the full input and participation of the Complainants, the Complainants assert that the Respondents issued inadequate awards of compensation based on valuation processes conducted without proper participation or notice to affected persons.
8. Even so, the Complainants assert that even the awards that were issued have not been made good through payment of compensation.
9. On the other hand, the Complainants allege that a number of project affected persons (PAPs) who were listed in the various gazette notices have never been issued with awards despite being taken through the inquiry process.
10. It is the Complainants' case, therefore, that the affected land owners fall into two categories being those who were issued with awards but the awards haven't been paid and those whose parcels of land were gazetted but have not been issued with awards to date.
11. The Complainants assert that to date only a few PAPs have been compensated despite the protests directed at the 1st Respondent who declined to give them audience or information that they were seeking on compensation.
12. It is the Complainants' case that the actions of the Respondents have violated their rights under Articles 35 and 40 of the Constitution of Kenya, 2010, Articles 5, 9, 14 of the African Charter on peoples and Human Rights, Articles 1 and 17 of the Universal Declaration of Human Rights, and Part VIII of the Land Act, 2012.
13. The Claimants assert that this Tribunal has jurisdiction to entertain their constitutional grievances arising out of the compulsory acquisition exercise and that prompt judicial relief is necessary to vindicate their rights. They ask the Tribunal to intervene in aid of justice and to order remedies including payment of outstanding compensation and, where appropriate, damages.
14. The Complaint is supported by the Supporting Affidavit of George Mwanzia Mulu sworn on 9 August 2024. Mr. Mulu swears on his own behalf and on authority of the other 55 Complainants.
15. Mr. Mulu avers that the Respondents took possession of the suit properties and started the road project in the year 2016 despite starting the process of compulsory acquisition in the year 2018. Thereafter, Mr. Mulu recalls, several gazette notices were published in 2018 through to 2022 declaring notices of intention to acquire and inquiries, and subsequently further notices to correct, add or delete some parcels of land contained in earlier notices.
16. Mr. Mulu also contends that between the year 2020 to 2022, the 1st Respondent issued notices of awards to PAPs but the said awards have not been paid to date. It is his further assertion that some PAPs have not received awards to date.



17. Mr. Mulu avers that only a few PAPs out of the 5000 affected PAPs have been compensated to date.
18. Mr. Mulu faults the valuation process undertaken by the 1st Respondent and avers that the awards issued were arbitrary and the PAPs had been coerced into accepting them as they could not afford to challenge them. It is his assertion that the 1st Respondent had severely undervalued the suit properties and the awards issued were not based on any valuation.
19. The Complainants further rely on several documents in support of their case including gazette notices, various letters of awards, copies of title documents and the Auditor General's Report for the year ended 30 June 2022.
20. The Complainants, therefore, pray for the following orders:
 - i. The Tribunal be pleased to hold and declare that the purported acquisition of the Suit Properties and improvements undertaken by the Respondents was carried ultra vires the Constitution and statutory law, thus infringing and violating the Complainants' rights to property.
 - ii. The Tribunal be pleased to hold and declare that the Respondents threatened, denied, infringed and violated the Complainants' rights to prompt payment of just compensation contrary to Section 8 of the Land Acquisition Act, Chapter 295 and Articles 40 of the Constitution of Kenya, 2010.
 - iii. The Tribunal be pleased to hold and declare that the respondents breached the Complainants' legitimate expectations that they would receive prompt payment of just compensation upon acquisition of the Suit Properties and Improvements as by law provided.
 - iv. A declaration that the Respondents have violated the Complainants' rights to property as provided for in Article 40 of the Constitution of Kenya 2010, article 14 of the African Charter of Human and Peoples' Rights (ACHPR) and Article 17 of the Universal Declaration of Human Rights.
 - v. A declaration that the Respondents have breached the Complainants' rights to dignity, equality and non-discrimination as provided for in Articles 27 and 28 of the Constitution.
 - vi. A declaration that the Respondents have violated the Complainants' rights to information under Article 35 of the Constitution of Kenya.
 - vii. A declaration that the Respondents have acted in impunity and in abuse of their powers.
 - viii. The Tribunal be pleased to hold and declare that the Respondents denied, threatened, violated and infringed the Complainants' rights to fair administrative action contrary to Article 47 of the Constitution.
 - ix. The Tribunal be pleased to hold and declare that the Respondents denied threatened, violated and infringed the Complainants' rights to access justice.
 - x. Pursuant to Section 117 of the Land Act, the Tribunal be pleased to hold and declare that the PAPs are entitled to interest above and/or at the Central Bank of Kenya Rates from the date of taking possession of land to the date of payment of compensation.
 - xi. The Tribunal be pleased to hold and declare that due process was not followed in the compulsory acquisition and valuation of the PAPs parcels of land that were compulsorily acquired.



- xii. The Tribunal be pleased to hold and declare that the PAPs parcels of Land that were compulsorily acquired were grossly and arbitrarily undervalued.
- xiii. The Tribunal be pleased to order that the PAPs are jointly and severally entitled to immediate, just and prompt payment of compensation by the Respondents.
- xiv. Pursuant to the Complainants' averment in paragraph 26 and 31 of this Complaint there be Judgment in the sum of Kshs.1,643,235,886 in favor of the Complainants and those whom they represent against the Respondents jointly and severally being the outstanding sum together with interest at 5% above Central Bank rates from December 2016 being the date of taking possession.
- xv. In addition to prayer 13 and 14 above, on account of undervaluation of the PAPs parcels of land compulsorily acquired, a mandatory order do issue compelling the Respondents to review all the awards issued to the PAPs three (3) times upwards or as this Honourable Court may deem fit.
- xvi. An order to issue against the Respondents to render true valuation for the parcels of land for all the PAPs whose land was compulsorily acquired at current market value and judgement be entered for the sum of the said valuation jointly and severally with interest at 5% above Central Bank of Kenya rates from December 2016 being the date of taking possession.
- xvii. Compensation for breach of the Complainants' constitutional rights.
- xviii. Punitive damages.
- xix. Exemplary damages.
- xx. Cost of the suit be awarded to the Complainants.
- xxi. The Tribunal be pleased to make such other or further orders as it may deem just in the circumstances

C. The Respondents' Case

- 21. The 1st Respondent responded to the Complaint through the Replying Affidavit of Brian Ikol – its Director, Legal Affairs and Dispute Resolution- sworn on 11 April 2025. Mr. Ikol acknowledges the factual background as laid down by the Complainants and asserts that the 1st Respondent complied with the law in the compulsory acquisition process of the suit properties.
- 22. It is the 1st Respondent's case that through the letter dated 2 March 2021, the 1st Respondent forwarded a compensation schedule to the 2nd Respondent totalling Kshs. 1,924,776,370.00 for a total of 2570 PAPs. That further to the 2 March 2021 requisition, the 1st Respondent requested for more funds through its letter of 5 September 2024 where it requested for an additional Kshs. 814,721,990.00 making a total of Kshs. 2,739,498,360.00 for a total of 3,557 PAPs.
- 23. Out of the Kshs. 2,739,498,360.00 requested, the 1st Respondent contends that it had received a total of Kshs. 365,393,906.00 at the time of filing this response. These sums are evidenced through forwarding letters from the 2nd Respondent over a period of three years starting from 19 May 2021 with the latest being on 28 February 2024.
- 24. The 1st Respondent avers that it made payments out of the Kshs. 365,393,906.00 it received to 241 PAPs leaving an outstanding number of 3,316 PAPs unpaid.



25. The 1st Respondent avers that it is yet to receive the outstanding amounts being claimed by the Claimants from the 2nd Respondent. On its part, it has no qualms whatsoever in remitting compensation to the 3,316 PAPs who are yet to be compensated as soon as it receives the funds from the 2nd Respondent. Additionally, the 1st Respondent has disowned the claims made by some of the Complainants, in particular, the 3rd, 6th, 19th, 20th, 22nd, 23rd, 25th, 26th, 38th, 41st, 42nd, 43rd, 45th, and 52nd Complainants.
26. On its part, the 2nd Respondent opposes the Complaint through a Response to Complaint dated 13 January 2025. The 2nd Respondent avers that the acquisition was undertaken pursuant to the provisions of the *Land Act* and its regulations.
27. The 2nd Respondent does not contest that only partial payments have been done through various schedules which have been verified, but avers that the outstanding compensation is being processed.
28. The 2nd Respondent also contests the allegations of undervaluation and avers that the same have not been proved.
29. Equally, the 2nd Respondent contends that it is a stranger to the claims by some of the Complainants, in particular, the 3rd, 6th, 19th, 20th, 22nd, 23rd, 25th, 26th, 38th, 41st, 42nd, 43rd, 45th, and 52nd Complainants.

D. The Complainants' Rejoinder

30. Through a further affidavit sworn by the 1st Complainant on 2 May 2025, the Complainants reiterate the contents of the Complaint and further aver that in regard to the Complainants whose claims have been disputed by the Respondents specifically the 38th, 45th and 52nd Complainants, their parcels of land had been deleted arbitrarily vide various gazette notices despite going through the inquiry process.
31. In respect of the 3rd, 6th, 20th, 22nd and 26th Complainants, it is averred that they are rightfully entitled to compensation having been gazetted, subjected to the inquiry process and issued with awards.
32. The Complainants further clarify that the 19th and 43rd Complainants are the legal representative of PAPs who are recognised in the compensation schedule. It is also stated that the 41st and 42nd Complainants are beneficiaries of the estate of a PAP who did not receive an award of compensation.

E. Analysis and Determination

I. Preliminary Matters

33. When this matter was filed on 9 August 2024, the Tribunal directed that the same be served and that responses be filed in respect of the Complainants' application for leave to commence the suit as a representative/ class action suit. On 5 September 2024, the Respondents had not entered appearance and having been satisfied that the application had been duly served and the same was unopposed and considering that on the face of it the same warranted the orders sought, we allowed the application for leave to commence the suit as a representative suit and directed that the same be advertised. This suit was, therefore prosecuted as a class action suit on behalf of other Complainants who were not party to the suit.
34. In consideration of the issues arising out of the suit, however, it is important that we delimit the scope of the class action suit in our consideration. As will be clear later on in this determination, such a delimitation is in order to not prejudice any would be future litigants on certain aspects that are not part of the class action suit. In other words, the aspects considered as brought or falling under a class action suit must be separated from other aspects that are unique to each Complainant in their own way.



35. The enabling provision of the law that allows for institution of a class action suit is Article 22 (2) (b) of the *Constitution* of Kenya 2010, which provides, “In addition to a person acting in their own interest, court proceedings under clause (1) may be instituted by – (b) a person acting as a member of, or in the interest of, a group or class of persons.”
36. The Civil Procedure Rules, 2010 under Order 1 Rule 8 shed light on circumstances where this may be allowed as follows: -
- a. Where numerous persons have the same interest in any proceedings, the proceedings may be commenced, and unless the court otherwise orders, continued, by or against any one or more of them as of all in same representing all or as representing all except one or more of them;
 - b. The parties shall in such case give notice of the suit to all such persons either by personal service or, where from the number of persons or any other cause such service is not reasonably practicable, by public advertisement, as the court in each case may direct;
 - c. Any person on whose behalf or for whose benefit a suit is instituted or defended under sub rule (1) may apply to the court to be made a party to such suit.
37. A class action suit, therefore, requires the existence of a significantly large number of persons who have the same interest. In *Andrew Muma And Charles Kanjama Trading as Muma & Kanjama Advocate & others v Deloitte & Touche East Africa & 5 others* [2020] eKLR, Nzioka J summed the test to be met as follows:
- 78for the court to allow a class action, the Applicants must prove inter alia that; there are numerous parties to the suit and they have significant or sufficient “same interest”, or “common interest” against the same person(s). There should be “community of interest”, whether it arises from the same transaction or not.
38. In the instant suit, the uncontested facts are that the impugned project affected approximately 3,557 PAPs. Although the Complainants asserted that it affected 5,000 PAPs, the 3,557 which is uncontested is still a significant number to satisfy the first test. On the question of the affected interests, the Complaint has listed a multiplicity of issues which we dissect in detail below. From our analysis, these issues can be grouped into the question whether the acquisition complied with the law, in general or whether the impugned process violated the rights of the PAPs, as the main issue, and other sub-issues being alleged undervaluation, deletions from the initial gazette notices and the taking of possession of the suit properties. The question then is what issue(s) forms a common interest that warrants a determination as a class action issue.
39. The process of compulsory affects individual rights to property under Article 40 of the *Constitution*. To that extent, even though a project would affect many PAPs in a particular area, the individual interests of the amount of compensation payable, size of land acquired or when the affected land is taken possession of will be rarely common. What is common to a certain extent, however, is whether the process complied with the law. For that reason, we shall restrict ourselves to determining whether the process of compulsory acquisition of land complied with the law as a class action issue. The rest of the issues raised in the Complaint shall be determined on the basis of the evidence presented on behalf of the named Complainants. This approach is necessary in recognition that a blanket determination of some issues on the basis of a class action suit may be antithetical to the right of other unnamed parties of access to justice. This is also in recognition that some of the issues raised in the Complaint, as argued by the 2nd Respondent, have been determined in other cases arising out of the same project and hence the determination of such issues would run afoul to the doctrine of res judicata for those particular cases.



40. The second preliminary matter is that in the course of these proceedings, the Tribunal was made aware that the 2nd Respondent had disbursed funds in various batches to the 1st Respondent for purposes of compensation. Indeed, counsel for the 1st Respondent confirmed to the Tribunal before the matter was reserved for judgement that the 1st Respondent had received the full amount for compensation and was in the process of disbursing the same to the PAPs. This being the situation, the parties acknowledged that a substantial part of the issues in the case had been addressed and opted to address the outstanding issues through submissions. On 17 July 2025, therefore, the Tribunal directed the parties to file submissions addressing any issues they felt was outstanding for the determination of the Tribunal.

II. Issues for Determination

41. The Complainants have identified numerous issues for our determination. The issues identified are whether i) the parcels of land belonging to the Complainants and other PAPs were compulsorily acquired by the government for the construction of the Kibwezi-Mutomo-Kitui-Migwani Road Project; ii) the compulsory acquisition was carried out in compliance with Article 40(3) of the *Constitution*; iii) the total amount payable to all PAPs for the acquired parcels was Kshs. 2,739,498,360.00; iv) there has been a delay of seven (7) years in effecting full compensation to the PAPs; v) the compensation status of some PAPs remains unresolved vi) the Respondents jointly and/or severally violated the Constitutional rights of the Complainants; vii) the Complainants are entitled to additional Constitutional remedies for the alleged violations of their rights; viii) the Respondents engaged in gross undervaluation of the Complainants' properties; ix) the PAPs are entitled to statutory disturbance allowance; x) the Respondents are obligated to compensate the specific Complainants whose entitlement has been contested; and xi) the Respondents should bear the costs.
42. The 1st Respondent did not file any written submissions and hence did not identify any issues for our resolution. The 2nd Respondent, on its part, identifies three issues for determination being i) whether the compulsory acquisition complied with the law; ii) whether the reliefs sought should issue; and iii) whether the class action suit is partly res judicata.
43. We cannot overemphasise the importance of precision in constitutional litigation. Despite the magnitude of the Complaint before us, it is the duty of counsel to identify with a reasonable degree of precision the constitutional violations complained of. This will enable the Respondents to have a fair chance at responding appropriately and also for the court to conduct an enquiry to determine if the violations complained of have been proved (See, *Anarita Karimi Njeru v Republic* [1979]).
44. The Complaint before us is rooted in Article 40(3). The Complainants allege that the process of compulsory acquisition has not been complied with therefore occasioning a violation of their rights. In our view, the issues can be addressed under two heads being: the procedural as well as the substantive complaints underpinning the Complaint. Under the procedural head, our inquiry will determine whether the impugned process has complied with the law and under the substantive head, we will address complaints regarding valuation/undervaluation, disturbance allowance, excluded/contested PAPs and interest. All the issues raised in the Complainants' submissions will be subsumed under these two heads.

i. Jurisdiction

45. Before turning to the two heads, we must first assess whether we are vested with appropriate jurisdiction to hear and determine this complaint. Jurisdiction is conferred by statute and not by consent or conduct of the parties. It is noteworthy that the 2nd Respondent has challenged this Tribunal's



jurisdiction, arguing that the claims pleaded fall under constitutional enforcement rather than the administrative and compensatory functions created under Part VIII of the *Land Act*, 2012.

46. The 2nd Respondent submits that Section 133C (1,7 & 8) envisages an appeal process whereby the Complainants must first move the Commission for a determination before the Tribunal can assume jurisdiction. Further, the 2nd Respondent argues that pursuant to Section 133C (8) the Tribunal is required to use the framework set out under the *Fair Administrative Action Act* or any other law and this includes Section 9(2) of the *Fair Administrative Action Act* which bars the Tribunal from entertaining the present allegations on violation of Article 47. The section bars a court from reviewing administrative action unless the mechanisms including internal mechanisms for appeal or review and all remedies available under any other written law are first exhausted. In the 2nd Respondent's view, the Tribunal should decline jurisdiction on the basis that the Complainants are yet to lodge a Complaint before the National Land Commission (the Commission) upon which the Tribunal can confirm, vary or quash pursuant to Section 133C (7) thereof.
47. The Tribunal has carefully considered the arguments on jurisdiction advanced by the 2nd Respondent. 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.
48. This provision 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* (See, *Ngoje & 6 others v National Irrigation Authority & another* [2024] KELAT 810 (KLR)).
49. That said, it is not in dispute that the gravamen of the matter before us relates to the process of compulsory acquisition. Fundamental to the Complainants' claim are the allegations relating to delay or non-payment of compensation, irregularities in valuation and inquiry procedures, and administrative actions of the Respondents under the *Land Act*. We have no doubt that these are matters that relate to compulsory acquisition and that they are well within the Tribunal's jurisdiction under Section 133C (8) of the *Land Act*.
50. Section 133C of the *Land Act* provides for two paths for invoking this Tribunal's jurisdiction being: the appeal path and the complaint path. A party who is dissatisfied by a decision of the Commission may appeal such a decision in accordance with Section 133C (2) of the *Land Act* and upon consideration of the same, the Tribunal may confirm, vary or quash the decision pursuant to Section 133C (7) thereof. It is important to note that the decision which would give rise to an appeal under Section 133C (2) of the *Land Act* is a decision pursuant to Section 113(1) of the *Land Act* which is a decision in the form of a written award upon conclusion of an inquiry (See, *Kenya Women Microfinance Bank Ltd v National Land Commission & 2 others* [2025] KELAT 200 (KLR)).
51. In our view, therefore, the second path for invoking this Tribunal's jurisdiction does not require a decision "to be appealed from" as the first path requires. Furthermore, the remedies available to the Tribunal upon the determination of a Complaint under Section 133C (8) of the *land Act* are those spelt out under Article 23(3) of the *Constitution* and Section 11 of the Fair Administrative Actions Act. It is upon the Court where a complaint has been filed to determine whether the same is merited and to issue the appropriate remedy.



52. In sum, this Tribunal is well clothed with jurisdiction to inquire into matters of alleged breaches of constitutional rights in the process of compulsory acquisition of land. We find no reason to depart from that position. As such, we are satisfied that this Tribunal is vested with the requisite Jurisdiction to determine the dispute at hand.

ii. Whether the process of compulsory acquisition complied with the law.

53. The process of compulsory acquisition of land is laid down under the Land Act. The statutory underpinnings of compulsory acquisition of land give effect the requirement under Article 40 (3) of the Constitution of Kenya to the effect that, “The State shall not deprive a person of property of any description...unless the deprivation – (b) is for a public purpose or in the public interest and is carried out in accordance with this Constitution and any Act of Parliament that - ...”

54. This process commences with a request from the county or national government for acquisition of land for a public purpose or in the public interest and terminates with the payment of compensation and vesting of land in government. We reiterate the summary laid down by the High Court in Patrick Musimba vs. National Land Commission & 4 Others (2016) eKLR as follows:

“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 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 the 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 those 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 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 person 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 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*.
 94. If land is so acquired the just compensation is to be paid promptly in full to persons whose interests in land have been determined. See Section 111 of the *Land Act*. This is in line with the Constitutional requirement under Article 40(3) of the *Constitution* that no person shall be deprived of his property of any description unless the acquisition is for a public purpose and subjected to prompt payment in full of just compensation.”
55. There is agreement on the basic facts underpinning this matter. There is no contest that compulsory acquisition of various parcels of land was commenced through various gazette notices issued by the 1st Respondent. These notices were issued between the year 2018 and 2022. It is also not in dispute that in addition to the gazette notices that were issued declaring a notice of intention to acquire, additional notices were issued deleting, correcting and adding some parcels of land that were either found not to be affected or that were affected but had been left out. Further, gazette notices were published scheduling inquiries in respect of the affected parcels of land. There is also evidence that inquiries were conducted from January to March 2019 initially and later in 2020 upon the publication of further gazette notices that added more PAPs. These inquiries were conducted in September and October 2020. Evidence also indicates that awards of compensation were issued to PAPs in 2020 and in 2021.
56. Whereas there is no dispute over these initial steps, the Complainants aver that there has been delay in payment of compensation. It is the Complainants’ case that there has been a delay of more than seven (7) years since the acquisition process was commenced. This, it is argued, violates the Complainants’ rights under Article 40(3) of the *Constitution* as read together with Section 2 of the *Land Act* which defines “prompt” payment as, “within a reasonable time of, and in any case not more than one year after, the taking of possession of the land by the Commission.”



57. On its part, the 2nd Respondent submits that the Complainants have not availed any evidence to show that possession was taken by the Commission. Further, the 2nd Respondent argues that the Commission is yet to complete the process having made its latest requisition on 5 September 2024. The 2nd Respondent further asserts that there has been no unreasonable delay in processing payments taking into account the total number of PAPs, the series of gazette notices issued along the way and the temporary vacancy in the Commission between 2019 and 2020.
58. The totality of the evidence demonstrates that this project involved a big number of PAPs and was done in a phased way. This is demonstrated through the phased gazette notices over a period of three years. It is also evident from the evidence that due to its magnitude, the project was certainly going to face many challenges in the verification of the PAPs and compensation once the process had been done. We also take judicial notice that during this period, the 1st Respondent was affected by the lack of commissioners which affected its decision making.
59. Significantly, also, the parties do not contest the evidence that payments have been made since 2021 through various batches of the compensation amount disbursed from the 2nd Respondent to the 1st Respondent. It is not contested that at the time of filing of this suit the 1st Respondent had received a total of Kshs. 365,393,906.00 disbursed between 19 May 2021 and 4 February 2024 (para 11 - Affidavit of Brian Ikol). It was also confirmed in evidence that these amounts had been paid to the PAPs as and when it was received. Further amounts were received during the course of these proceedings with a confirmation that the full sum for compensation of the PAPs had been disbursed.
60. The evidence of the disbursements over the years and payments to the PAPs negates the Complainants' contention that there has been delay of over 7 years. Besides, in the context of the class action suit, the allegation is unproven as there is no commonality of issue for the PAPs in this regard. Furthermore, the Complainants have not availed sufficient evidence to show when possession of the affected parcels of land was taken by the Respondents and specifically those PAPs who had not received compensation. The allegations are too general in this regard and unsupported by evidence.
61. The evidence in our assessment shows that although the full sum for compensation of PAPs had not been availed at the beginning of the process to the 2nd Respondent, the phased nature of this process would not have made it possible for this to happen. Our analysis of evidence has also shown that any delays in completing the process and on making payments of compensation is sufficiently explained considering the large number of PAPs involved and the level of scrutiny expected to ensure that the process is above board.
62. Additionally, it is the Complainants' case that the Respondents failed to conduct public participation contrary to the dictates of the *Constitution* of Kenya, 2010. In this regard, the Complainants argue that their rights to fully participate were infringed when their individual valuation reports were reviewed downwards without consulting them or even conducting independent valuations. In response to this, the 2nd Respondent submits that 1st Respondent complied with the framework for participation of PAPs as laid down in Sections 112 and 113 of the *Land Act*. In that regard, the 2nd Respondent submits that the 1st Respondent discharged its duty by conducting inquiries.
63. Evidence on record demonstrates that the 1st Respondent published various notices for inquiries over the period in question. At these inquiries and as admitted by the Complainants, claims were lodged and thereafter awards of compensation issued. In this regard, therefore, we are satisfied that the Respondents complied with the law in terms of conducting public participation for PAPs as envisioned under the *Land Act* – through inquiries. We also do not find merit in the Complainants' argument that the public participation was not sufficient because the Complainants' valuations were reviewed



downwards. The 1st Respondent is under a duty to make its own independent determination upon an inquiry and is not bound by the private valuation done by a PAP. Any PAP who is dissatisfied has recourse to file an appeal as discussed below.

64. In conclusion, we find that the Respondents complied with the law in the compulsory acquisition process and that the allegations of violations of the Complainants' rights in the process are unproven.

iii. Allegations of undervaluation and statutory disturbance allowance

65. It is the Complainants' case that the Respondents failed to conduct a proper and independent valuation or to allow the Complainants to fully present their case. The Complainants aver that they were not afforded any opportunity to clarify or defend their valuations and instead the 1st Respondent issued them with awards that were grossly and arbitrarily lower than the submitted figures. This, the Complainants argue, is a clear violation of their rights and highlights the lack of transparency and accountability in the acquisition process.

66. The 2nd Respondent in response submits that the Complainants have not shown any evidence that they challenged the alleged undervaluation as required under the law. The 2nd Respondent avers that there is evidence that the Complainants accepted their awards of compensation.

67. A PAP who is dissatisfied with an award of compensation has a right to challenge that award pursuant to Section 133C (2) of the Land Act. There is no evidence that any of the Complainants herein who consider their awards as insufficient took the step of challenging those awards. On the contrary, those PAPs accepted the awards and are therefore bound by that acceptance. Further, as we stated at the beginning of this analysis, a challenge to value is individual to each PAP who has been issued with an award of compensation. It is upon each PAP who is dissatisfied to express such dissatisfaction to the Commission by rejecting the award and proceeding to file an appeal. This Tribunal has previously reiterated this position in *Mbebe v. National Land Commission & another* (Tribunal Case E029 of 2024) [2024] KELAT 1213 (KLR) (2 August 2024) (Judgment) where we stated:

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 12th 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 1st 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 12th January 2021 which he accepted. By accepting the said award, the Claimant entered into a legally enforceable contract with the 1st 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 1st Respondent has not paid the awarded compensation.

68. On whether the 1st Respondent included statutory disturbance allowance, the Complainants contend that the Respondents have not furnished evidence to show that the statutorily mandated 15% disturbance allowance was included in the awards of compensation.

69. The Respondents refute this allegation and asserts that the evidence presented even by the Complainants themselves show that the statutory 15% disturbance was taken into consideration in the computation of the awards payable.



70. We agree with the Respondents that the awards submitted as part of the Complainants' documents demonstrate that statutory disturbance was taken into account. This allegation is, therefore, without merit.

iv. Allegations of excluded/contested PAPs

71. The Complainants allege that 14 of the Complainants are entitled to compensation but their names were either deleted or have not been issued with awards. The Complainants also indicate that some of the affected Complainants have been issued with awards but they have been excluded as not entitled to payment of compensation. The Complainants aver that they have submitted sufficient evidence to demonstrate that they hold legitimate interests in the properties affected by the acquisition. It is submitted that these Complainants' rights crystallised at the point of gazette notice or possession.
72. In regard to the affected Complainants, the Respondents assert that they are not entitled to any compensation. The 2nd Respondent submits that the first category of the affected Complainants formed a group of persons whose parcels were deleted through gazette notices because their parcels were not found to be affected by the project. The 2nd Respondent avers that the persons who were affected by the deletions were invited to inspect the plans at the Commission's offices and to receive any explanation therefrom. These deletions, the 2nd Respondent argues, did not constitute any violation as the 1st Respondent could delete and/or add PAPs as circumstances could dictate. The 2nd Respondent relies on the case of *Kyambia & 10 others v. Kenya National Highways Authority & 2 Others* (Environment & Land Petition 1 of 2022) [2024] KEELC 226 (KLR) (23 January 2024) (Judgment) which was based on similar circumstances and on the same project. In that case the court stated:
90. The evidence adduced does not show that the Petitioners' parcels of land were compulsorily acquired by the Respondents entitling them to compensation. In the present case, the land in dispute was already part of the road reserve and the Respondents could not be expected to compensate the Petitioners for land that did not belong to them.
73. The Commission is under a duty to ensure that only PAPs whose properties have been affected receive compensation for the properties acquired. In this process, if the Commission notes an error in the initially published notice of intention to acquire, it is within its rights to correct the same through a corrigendum which might delete, add or correct the size of land acquired. In this case, it is upon the affected party to present evidence to show that their parcel of land has been affected and the extent to which it has been affected. It is not enough to assert that a person's name or parcel of land had been gazetted hence they are entitled to compensation. A party must present sufficient evidence to show how their parcel of land has been affected. This can be done through a survey report. The Complainants in this case have failed to do so and their claim to that extent is without merit.
74. On the question of those alleged to be beneficiaries of PAPs, it goes without saying that any party who is not a direct PAP must have the requisite authority to claim compensation. Such parties must avail the necessary documents showing their authority to receive compensation on behalf of the estate of a PAP where the direct beneficiary is deceased. The 1st Respondent is under a duty to verify the documentation by conducting a further inquiry and thereafter making payment to the party entitled to receive payment. In *Mohamedali (Suing as the Administrator of the Estate of Hassanali Mohamedali Noorbhai) v National Land Commission* [2025] KELAT 191 (KLR) we held as follows:
44. In a case where the Respondent has issued an award upon the holding of an inquiry but issues arise that may warrant further investigations in regard to the title or ownership before compensation is paid, it is expected that the Respondent will expeditiously resolve any such issues in order to comply with the Constitutional requirement of payment of compensation



promptly. We take judicial notice that there may be cases where a party may contest the ownership of the property earmarked for acquisition even after an inquiry has been conducted. It is prudent for the Respondent in such a case to withhold any payment until such an issue is resolved. We also take judicial notice of the fact that there have been instances where the Respondent has faced litigation arising out of making payments to the wrong parties. In a nutshell, utmost scrupulousness is required on the part of the respondent before paying out compensation. But again, we must stress that the exercise of such scrupulousness must accord with the constitutional dictates of fair administrative action being the aspects of expeditiousness, lawfulness, reasonableness and procedural fairness in accordance with Article 47(1) of the Constitution.

75. In summary, it is upon a complainant who has been left out to individually pursue the right process to obtain compensation if they are entitled to compensation. In case they fail to get compensation, then they can approach the Tribunal with the requisite evidence to enable the Tribunal to make a determination of their entitlement. This case has failed to discharge that burden and this issue is not merited as well.

v. Interest on delayed payments

76. The Complainants seek interest on the delayed payments on the basis that interest should be paid from the date of taking possession pursuant to Section 117(1) of the Land Act. The Respondents aver that the Complainants are not entitled to payment of interest as they have not shown through evidence when such possession was taken.

77. Section 117 (1) of the Land Act provides as follows:

If the amount of any compensation awarded is not paid, the Commission shall on or before the taking of possession of the land, open a special account into which the Commission shall pay interest on the amount awarded at the base lending rate set by the Central Bank of Kenya and prevailing at that time from the time of taking possession until the time of payment.

78. We have made a finding above that no sufficient evidence was presented to show when possession was taken in this matter. On the basis of that finding, we are not inclined to award any interest. However, and importantly, an award of interest is discretionary on the court and such a discretion is exercised in consideration of the circumstances of the non-payment of the award of compensation. In this case, the facts demonstrate that the Respondents have endeavored to make payments over the years and the full amount has now been remitted to the 1st Respondent. This is a case that calls for exercise of discretion against awarding interest.

F. Final Orders

79. Considering our conclusions above on the issues we identified for resolution, our determination is that the suit is without merit and is hereby dismissed. We, however, make no orders as to costs considering the nature of the suit and the involved parties.

DATED AND DELIVERED VIRTUALLY AT NAIROBI THIS 2ND DAY OF DECEMBER 2025

DR. NABIL M. ORINA - CHAIRMAN

GEORGE SUPEYO - MEMBER

RUTH OKAL - MEMBER

In the presence of:



Ms. Nambande h/b for Ms. TJ Michael for the Complainants
Ms. Ochieng h/b for Prof. Mumma SC for the 2nd Respondent
Lucy – Court Assistant

