



Did you know that when your land is compulsorily acquired you may be entitled to damages in addition to compensation for the market value of the land?

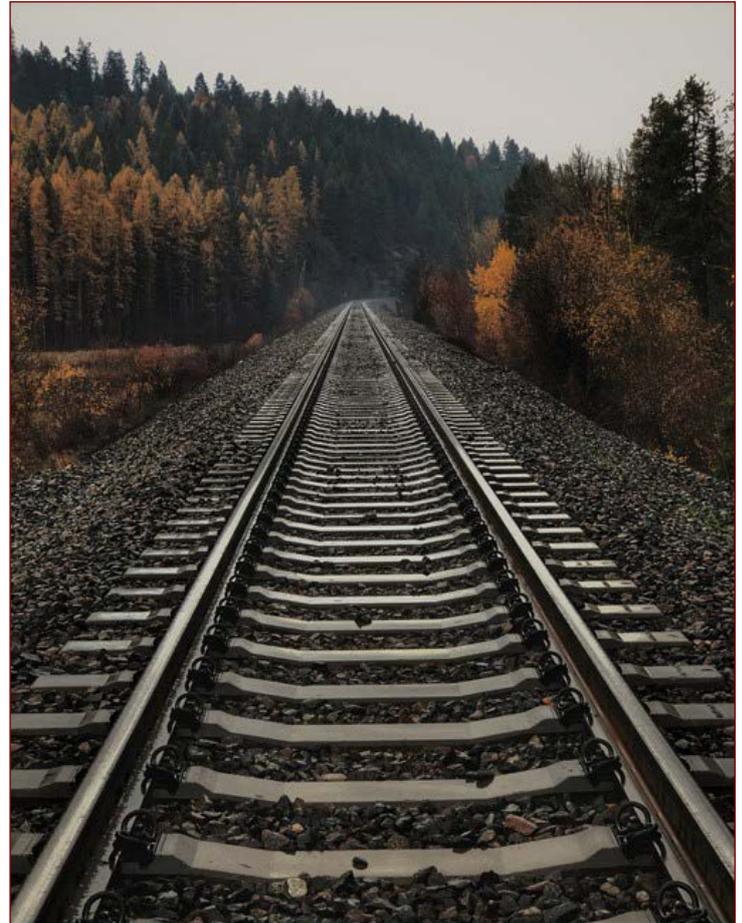
By Jeji Edgar

Introduction

Private land can be acquired compulsorily by the government where the land is needed for public benefit or where it is in the interest of the public. In this regard, an individual can be deprived of his right to private land on condition that he is promptly compensated in full and the acquisition is for a public purpose or in public interest. Compulsory acquisition is an administrative process, and the persons with an interest in land targeted for acquisition must be given a chance to air their views or opposition to that process.

The National Land Commission (NLC) is mandated under section 107 of the Land Act to acquire land compulsorily on behalf of both the national and county governments. The process starts when a cabinet secretary or a county executive committee member submits a request for compulsory acquisition of land to the NLC. The NLC has the powers to reject an application for compulsory acquisition if the request does not meet the requirements of Article 40(3) of the Constitution namely acquisition for a public purpose or in public interest.

Once the NLC is satisfied that the conditions for compulsory acquisition are met it publishes a notice in the Kenya Gazette, the land Registry and to everybody who appears to be interested in the land. After getting the notice, a person interested in the land can challenge all or some aspect of the intended compulsory acquisition. Interested persons include people whose interests appear in the land register, their spouse(s) together with the persons occupying the land targeted for the acquisition.



Aspects considered when assessing compensation payable following Compulsory acquisition:

1. Market value of the land

This is the probable price that a property should go for in a competitive and open market. In addition the value of compensation paid out should also take into account the loss of future earnings.

2. Compensation for disturbance

The NLC is required to add a sum equal to 15% of the market value to the amount of compensation as compensation for disturbance.

3. Reasonable expenses related to relocation

Where a person whose land is compulsorily acquired will be compelled to change residence or place of business as a consequence of the acquisition the payment made to him should include reasonable expenses incidental to the relocation.



4. Damages

Some of the notable aspects of damages that the NLC should consider are:

- 4.1. Damage likely to be sustained by person(s) interested in the property where acquisition of the land results in severing it from other land owned by the interested person. An illustration of this is where the mid- section of land belonging to the interested person is acquired to construct a railway line which leaves the interested person with two distinct parcels of land on either side of the railway line. Such person may find the parcel of land he is left with inaccessible where the railway line cuts off the road by which the said portion of the land was accessed. In other instances the parcels of land left to the interested person may be of no economic viability owing to the size of land left following the acquisition.
- 4.2. Damage sustained where the acquisition injuriously affects the interested persons other property or his actual earnings. An illustration of this is where the acquired land comprises of a natural water source which sustains agricultural activities that the interested person engages in on adjoining land that is not acquired.

NB: Where NLC fails to give adequate consideration to the above aspects then its decision on compensation can be challenged in court.