



**Laly Furnishing House Ltd v Kenya National Highways Authority & 2 others (Environment & Land Case 925 of 2015) [2023] KEELC 17224 (KLR) (27 April 2023) (Judgment)**

Neutral citation: [2023] KEELC 17224 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE 925 OF 2015**

**OA ANGOTE, J**

**APRIL 27, 2023**

**BETWEEN**

**LALY FURNISHING HOUSE LTD ..... PLAINTIFF**

**AND**

**KENYA NATIONAL HIGHWAYS AUTHORITY ..... 1<sup>ST</sup> DEFENDANT**

**CHINA ROAD AND BRIDGE CORPORATION ..... 2<sup>ND</sup> DEFENDANT**

**NATIONAL LAND COMMISSION ..... 3<sup>RD</sup> DEFENDANT**

**JUDGMENT**

1. Through an Amended Plaintiff dated 23<sup>rd</sup> August 2019, the Plaintiff averred that it is the registered lessee of the parcel of land being, L.R. No. 209/18172 situated along Mombasa Road Nairobi, near the Nairobi Southern Bypass, pursuant to Grant I.R. 115251 (the suit land).
2. It was averred by the Plaintiff that following a letter from the Department of Lands Office dated 30<sup>th</sup> January 2007, informing them that the original suit property, then L.R. 209/12058, had encroached on the Southern Bypass by approximately 0.154 Ha, a re-survey process was conducted to exclude such portion and a new Deed Plan number 208248 was issued with a new Land Reference No. 209/18172 (the suit land).
3. According to the Plaintiff, he executed a surrender of the portion measuring 0.1540 Ha, and surrendered the original Grant No. 61547 in respect of L.R. 209/12058 to the Government before being issued with a new Grant of Lease I.R. 115251 on 25<sup>th</sup> January 2009. It is the Plaintiff's case that on 20<sup>th</sup> November 2013, they became aware of a Southern Bypass/ Mombasa Road interchange billboard erected by the Defendants near the suit land exemplifying a fourth roundabout that would pass through the suit property and consume it entirely.



4. It was averred in the Plaint that the said interchange was not indicated in the planning and survey documents; that the 1993 Nairobi Approved Development Plan illustrates only three roundabouts, neither of which touch the Plaintiff's property and that the Plaintiff sent multiple letters to the Defendants in respect to the advertisement of the fourth roundabout without reply between 2013 and 2014.
5. According to the Plaintiff, without notice, on 5<sup>th</sup> February 2014, workers and agents of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants unlawfully entered the suit land and began excavating the suit land and started road building works on the suit land; that the road has since been completed and is in use by the public and that as at August 2015, the property was valued at Kshs. 822,250,000/-.
6. The Plaintiff avers that the actions of the Defendants are a blatant act of trespass to land and a breach of the Plaintiff's constitutional and statutory private property rights; that these acts included taking possession of and removing the Plaintiff's corrugated iron buildings, partitions, fencing and other fixtures on the property, and clearing of trees and plants, which were an act of the tort of conversion by the Defendants.
7. In addition, it was averred that the Defendants denied the Plaintiff business income which resulted in loss of profits in the sum of Kshs. 500 million which was an offer made to and accepted by the Plaintiff for the suit property in November 2013.
8. It was the averment of the Plaintiff that the 3<sup>rd</sup> Defendant unlawfully and illegally purported to recommend revocation of the suit property's title vide Kenya Gazette Vol. CXIX-No. 97 dated 17<sup>th</sup> July 2017; that at the time this suit was instituted, the 3<sup>rd</sup> Defendant had not made such recommendation and that such action was contrary to the common law doctrine of *lis pendens*.
9. The Plaintiff has on this basis sought the following orders:
  - a. A Declaration that the Plaintiff is the lawful owner of the suit property and that the Defendants jointly and/ or severally violated its constitutional and statutory private property rights with regards to the suit property.
    - aa. A Declaration that the decision and/or order of the 3<sup>rd</sup> Defendant published in the Kenya Gazette Vol. CXIX No. 97, Gazette Notice No. 6862 dated 17<sup>th</sup> July 2017 by the 3<sup>rd</sup> Defendant recommending revocation of the title to the suit property L.R. No. 209/18172 is/was illegal, unlawful and unconstitutional and is in breach of the Constitutional and Statutory rights of the Plaintiff with regard to the Suit property and therefore null and void ab initio.
  - b. An order of compensation in the amount of Kshs. 822,250,000.
  - b. General damages for trespass and breach of private property rights.
  - c. General damages for conversion and taking away of movable property.
  - b. Special damages in the amount of KShs. 5,122,930.0 being legal and valuation costs incurred by the Plaintiff with regard to the dispute herein between the parties herein.
  - b. Punitive damages for breach of constitutional and statutory rights and provisions with regard to the suit property.



- b. Costs of the suit.
  - b. Interest on (b), (c), (d), (e), (f) and (g) above at the prevailing court rates; and any other further declaration, order, award or relief favourable to the Plaintiff as this Honourable Court may deem fit, just and expedient to award, grant or issue.
10. In their joint Amended Defence dated 11<sup>th</sup> November 2020, the 1<sup>st</sup> and 2<sup>nd</sup> Defendants opposed the suit and averred that the Plaintiff is not the registered owner of the suit land and that the suit premises is a subdivision of a larger parcel of land known as L.R. No. 11308, which was compulsorily acquired in accordance with Section 6(2) and 9(1) of the Land Acquisition Act, 1968 for public purpose.
11. The 1<sup>st</sup> and 2<sup>nd</sup> Defendants averred that the suit land was thus incapable of alienation or allocation in favor of the Plaintiff and its predecessors in title; that the public right to construct the road on the suit premises overrides the Plaintiff's title; that the Government developed detailed designs for the road, being Nairobi South Structure Plan No. 42/28/85/9 dated 5<sup>th</sup> June 1985, which was legally subjected to approval processes and that the 3<sup>rd</sup> Defendant had legal right to cancel the Plaintiff's purported title and that the title stands cancelled.
12. In their Reply to the 1<sup>st</sup> and 2<sup>nd</sup> Defendant's Amended Statement of Defence, the Plaintiff averred that the 3<sup>rd</sup> Defendant has not demonstrated that they compensated the Plaintiff before or after compulsorily acquisition of the suit land; that the 3<sup>rd</sup> Defendant has not demonstrated that it followed due process of ascertaining proprietorship of the suit land before or after compulsory acquiring the suit land and that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants cannot discredit the valuation of the suit land as they have not tendered a divergent report to justify such disapproval.

### **Hearing and Evidence**

13. PW1, the Director of the Plaintiff, relied on his witness statement as his evidence in chief. PW1 reasserted the facts as set out in the Plaint, which are that the Plaintiff is the registered owner of the suit land being LR No. 209/18172 and that the suit land was as a result of a surrender of 0.0140 Ha from original property L.R. No. 209/12058 in 2009.
14. It was the testimony of PW1 that the Plaintiff became aware in 2013 that the Defendants intended to construct a fourth roundabout on the Southern Bypass/ Mombasa Road interchange that would traverse the suit property; that without notice to the Plaintiff, the construction began on 5<sup>th</sup> February 2014 and that the 3<sup>rd</sup> Defendant purported to revoke the Plaintiff's title vide a gazette notice despite the pendency of the suit.
15. PW1 produced in evidence documents which included a Certificate of Incorporation of the Plaintiff; Registration of Lease of L.R. No. 209/18172 and official search thereto; the Grant of LR No. 209/12058; the letter dated 30<sup>th</sup> January 2007 from the Ministry of Lands; the Deed of Surrender to the Government of LR No. 209/12058 and photographs of billboards erected on the suit premises by the 1<sup>st</sup> Defendant.
16. PW1 also produced in evidence the Nairobi Part Development Plan No. 409 for Nairobi South dated 25<sup>th</sup> May 1993; several letters; the Valuation Report of LR No. 209/18172 dated 20<sup>th</sup> August 2015; photographs captured in February 2014 of excavations and building works on the suit land and land rates and rent clearance certificates of the suit property in the name of and paid by the Plaintiff.



17. During cross-examination, PW1 testified that he had a part development plan before the suit land was issued to him, and that the land they acquired in 1985 was not on a road reserve.
18. DW1, the Assistant Director Surveys, relied on her statement as her evidence in chief. She testified that dating back to the late 1970s, the Government sought to address the worsening traffic situation through constructing bypasses to divert traffic from the city centre and that the Nairobi Structure Plan No. 42/28/89/9 dated 5<sup>th</sup> June 1985 was provided for construction of the interchange which was designed to directly link to Likoni Road, and a link road between Mombasa and Enterprise Roads.
19. DW1 stated that Kenya and Japanese Governments retained the services of the Japan International Cooperation Agency (JICA) who finetuned the design submitted vide Memorandum ref. NBJ/90-35 dated 28<sup>th</sup> September 1990, which shows the boundaries of the interchange covering the suit property in this matter and that the design was forwarded to the Director of Physical Planning by the Chief Engineer Roads vide the letter dated 2<sup>nd</sup> October 1990.
20. According to DW1, the Ministry finalized the design to include a fourth roundabout within the land reserved for the Southern Bypass/ Mombasa Road/ Likoni Road interchange. DW1 produced in evidence a copy of the Kenya Gazette dated 1<sup>st</sup> December 1972 and 13<sup>th</sup> September 1972; and a copy of the Nairobi South Structure Plan No. 42/28/85/9 dated 5<sup>th</sup> June 1985.
21. DW1 also produced in evidence a copy of the letter dated 18<sup>th</sup> September 1990; JICA Memorandum together with the design and an explosion of the interchange area; a copy of the letter dated 2<sup>nd</sup> October 1990 and a copy of the final design for the Southern By-pass interchange.
22. DW1 testified that in any case, the suit land falls within the property reserved in the 1985 plan for the interchange; that the Plaintiff was always aware that the suit premises were on a road reserve; that the Plaintiff's acquisition including transfer and vesting reveals the same to be doubtful and that this court ought to determine the legal standing of the Plaintiff's claim to ownership before considering the compensation claims.
23. It was the evidence of DW1 that the suit property was designated a road reserve in 1985, well before the Plaintiff or its alleged predecessors acquired the land; that even with the voluntary surrender of Grant No. 65157, the Plaintiff was aware that the suit land was reserved for construction of the Southern Bypass and that the 1<sup>st</sup> Defendant has an overriding interest to the title of the suit land.
24. In cross-examination, DW1 stated that the final designs for the fourth roundabout was done in 2012, while the other three were done in the 1990s and that the Plaintiff's title was fraudulently acquired. It was her evidence that the structural plan was never amended to reflect the Plaintiff's Part Development Plan.

## Submissions

25. In their written submissions, counsel for the Plaintiff submitted that the Plaintiff has established that it is the registered owner of the suit property, and that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants did not produce any evidence to counter the said ownership. Further, it was submitted that while the Defendants alluded to fraud, they failed to tender evidence in support of the said allegations.
26. Counsel sought to rely on Section 24(a) and 26(1) of the *Land Registration Act* 2012. He also relied on the cases of Margaret Njeri Wachira vs Eliud Waweru Njenga [2018] eKLR, Propwa Company Limited vs Justus Nyamo Gatondo & Another [2020] eKLR, Vijav Morjaria vs Nansingh Madhusingh Darbar



& Another [2000] eKLR, Central Kenya Ltd vs Trust Bank Ltd & 4 Others [1996] eKLR and R vs Devon County Council ex parte Baker [1995] 1 All ER.

27. It was submitted that the Defendants have not shown how the summary is connected to the original LR No. 12058 or the suit property LR No. 209/18172; that the Defendant's evidence did not indicate that the suit property was identified, mapped and marked as a road reserve and that the purported revocation of title by the 3<sup>rd</sup> Defendant was not supported by any evidence.
28. The Plaintiff's counsel further submitted that the plan for a fourth roundabout was an afterthought which was included much later, and that DW1 did not substantiate its claim that the said roundabout was designed in 2012.
29. Counsel sought to rely on *Isaiah Otiato & 6 Others vs County Government of Vihiga* [2018] eKLR and *Patrick Musimba vs National Land Commission & 4 Others* [2016] eKLR where the court addressed the issue of compensation for compulsory acquisition.
30. Counsel submitted that the 3<sup>rd</sup> Defendant failed to follow the process of compulsory acquisition of the Plaintiff's property as set out in *the Constitution* of Kenya 2010 and the *Land Act* 2012; that the Defendant failed to publish its intention to acquire the suit property in the Kenya Gazette and that the 3<sup>rd</sup> Defendant failed to convene any meeting under Section 112 of the Act to determine the just award for compensation, and failed to pay the compensation due to the Plaintiff.
31. Counsel submitted that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants trespassed onto the suit property on 5<sup>th</sup> February 2014, without the knowledge and without any legal authority, causing the Plaintiff financial and economic loss of income and loss of profits.
32. The Plaintiff's counsel submitted that contrary to Order 9 Rule 2 (c) of the Civil Procedure Rules, DW1 failed to exhibit a written authority under seal from the 1<sup>st</sup> and 2<sup>nd</sup> Defendants, authorizing her to issue statements and adduce evidence on their behalf and that the court should find that the oral testimony, written statements and documents produced by DW1 are inadmissible.
33. The 1<sup>st</sup> and 2<sup>nd</sup> Defendants submitted that the disputed land is public land and that the rights outlined in Article 40 of *the Constitution* do not extend to property acquired illegally; that the suit land was lawfully acquired in the early 1970s and has remained as such to date; that the suit land falls inside the reserved land and that although it is contended that the 4<sup>th</sup> roundabout was an afterthought, this did not matter as the land acquired was enough to accommodate construction of the roundabout.
34. It was counsel's submission that although DW1 failed to present written authorizations from the 1<sup>st</sup> and 2<sup>nd</sup> Defendants, she testified that she was duly authorized by the Defendants to issue statements, and to give and adduce evidence on their behalf and that written authority is not mandatory as long as the person is possessed of the facts of the dispute.

### **Analysis and Determination**

35. Having considered the pleadings filed by the parties, the oral testimony, documentary evidence and written submissions in this matter, the following issues arise for this court's determination:
  - a. Whether the Defendant's witness properly gave evidence for the 1<sup>st</sup> and 2<sup>nd</sup> Defendants.
  - b. Whether the Plaintiff is the legal owner of the suit property and ought to be compensated for compulsory acquisition of the suit land.



- c. Whether the 3<sup>rd</sup> Defendant's action to revoke the Plaintiff's title was lawful.
- d. Whether the actions of the 1<sup>st</sup> and 2<sup>nd</sup> Defendant constitutes trespass.
36. The Plaintiff's claim is that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants unlawfully and without notice, acquired their property and built a fourth roundabout to the Southern Bypass Interchange, which was not in the 1993 Nairobi Approved Development. It is the Plaintiff's case that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants failed to compensate them for the acquisition of its land, and that the Defendants' actions constitute trespass and conversion.
37. On their part, the 1<sup>st</sup> and 2<sup>nd</sup> Defendants have challenged the Plaintiff's title to the suit land. They have averred that the suit land was part of LR No. 11308, which was compulsorily acquired in the 1970s. According to the Defendants, while the design of the fourth roundabout may have been done in 2012, the suit land was part of the area acquired in the 1970s for public use.
38. Before considering the key question of ownership of the suit land, this court must first address the issue of the evidence presented in this case by the Defendants' witness, DW1. The Plaintiff has challenged the oral, written and documentary evidence adduced by the witness on the ground that she failed to produce written authorization from the 1<sup>st</sup> and 2<sup>nd</sup> Defendants allowing her to give evidence on their behalf.
39. In this matter, the 1<sup>st</sup> Defendant is a state corporation established under Section 3 of the [Kenya Roads Act](#), whereas the 2<sup>nd</sup> Defendant is a limited liability company incorporated in Kenya. In her Witness statement, Ms. Milcah Muendo, DW1, deponed that she is an Assistant Director of Surveys of the 1<sup>st</sup> Defendant.
40. The Plaintiff has relied on Order 9 Rule 2 (c) of the Civil Procedure Rules which provides that in any matter in court involving a corporation, an officer of the corporation duly authorized under the corporate seal, is a recognized agent and may make appearances, applications and other acts on behalf of such corporation.
41. The Plaintiff relied on the case of *Madin Clearing & Forwarding Limited vs Bamburi Supermarket Limited* [2022] eKLR, where the court held that unless one is a director or official of a limited liability company, a written authority is required to bring an application on behalf of such company.
42. On their part, the Defendants sought to rely on the case of *Agnes Nyambura Munga t/a Unisex Aero Salon vs Convert Holdings Limited* [2021] eKLR, where the court relied on the holding in the case of *Peter Onyango Onyiego vs Kenya Ports Authority* (2004) eKLR and held that affidavits, save for the verifying affidavits, can be sworn on behalf of individuals or corporations by anybody as long as that person is possessed of the facts and or information that he depones on.
43. It is clear from the above decisions of this court that where a person seeks to act or file an application on behalf of a limited liability company, they ought to present evidence of authorization to act on behalf of such company, particularly when they are not a director, shareholder or official of such company.
44. In the cited case of *Peter Onyango Onyiego vs Kenya Ports Authority* (2004) eKLR, Maraga J (as he then was) considered the nature of the 'acts' referred to in Order 3 Rule 2 ( now Order 9 Rule (2)) of the Civil Procedure Rules and stated as follows:

“My understanding of the acts envisaged by these provisions are acts like drawing and filing of pleadings and appearing in court to present one's case or make an application... Clearly those acts can only be performed by the parties themselves, their duly authorized agents or



their advocates. I am fortified in this view by a commentary in Mulla on the Code of Civil Procedure 12<sup>th</sup> Edition in which the learned author in considering similar provisions stated at page 553 that “Acting includes the examination of witnesses, so a recognized agent can cross-examine witnesses”.

The question I would like to pose here is this: Are affidavits that are sworn and filed in courts among the acts covered by the provisions of Order 3 Rules 1 to 5 that must be done by the parties themselves or their duly appointed agents?... From these definitions it is clear that an affidavit is a sworn statement usually given to be used as evidence. So anybody swearing an affidavit on behalf of a corporation can also give evidence for or on behalf of a corporation. To suggest therefore that everybody who testifies for or on behalf of a corporation has to have authority from the corporation given under seal as required by order 3 Rule 2(c) is in my view not correct. In the circumstances I hold that other than verifying affidavits which as I have stated must be sworn by plaintiffs themselves or their authorized agents all other affidavits filed and used in courts are not among the acts covered by Order 3 Rules 1 to 5. All other affidavits can be sworn on behalf of individuals or corporations by anybody as long as that person is possessed of the facts and or information that he depones on, that in the rules of evidence, would be admissible.”

45. This court agrees with the above dicta, and finds that the witness need not have presented authority from the 1<sup>st</sup> or 2<sup>nd</sup> Defendants to adduce evidence on their part. In any case, this court is bound by the decision of the Court of Appeal in *Wines & Spirits Kenya Limited & another vs George Mwachiru Mwangi* [2018] eKLR where the court held that where a public official purports to act in a certain capacity, the court may presume the veracity of their capacity to act:

“Under the law of evidence, the court is allowed to make certain presumptions of fact. One such presumption is with regard to persons acting in a certain capacity or under documents. According to Phipson on Evidence; 17<sup>th</sup> Edn at p.1264-65; where a public official purports to act in a certain capacity, the court may readily presume the veracity of his capacity to so act. However, a higher premium is placed upon a private individual. The authors had this to say on the subject:

“Generally, however, private relationships cannot, except as against the parties acting or acquiescing, be so established...As against the parties themselves, however, acting in a capacity is, in civil cases, generally, and even in criminal cases sometimes, sufficient proof; though, where the appointment is by written contract, and not mere resolution, and its terms are material, parol evidence will be inadmissible if the document itself can be produced.”

46. The Court of the Appeal was of the view that the production of written authorization is only mandatory where contractual issues have been raised, not in cases of authorization by mere resolution. Having found that DW1’s evidence is admissible and rightly on record, this court shall now consider the question of the Plaintiff’s ownership of the suit property.
47. It is the Plaintiff’s case that it is the legal owner of the suit land. In the Plaint, the Plaintiff narrates at length the process through which the suit land came to be. It is the Plaintiff’s case that on 30<sup>th</sup> January 2007, it was informed that the original suit property, then L.R. No. 209/12058, had encroached on the Southern Bypass by approximately 0.154 Ha and that the suit land in this matter, LR No. 209/18172 was created following excision of 0.154Ha and surrender of the Certificate of Title of LR



No. 209/12058. According to the Plaintiff, LR No. 209/18172 was later acquired by the 1<sup>st</sup> and 2<sup>nd</sup> Defendants for the construction of a roundabout.

48. Section 26(1) of the *Land Registration Act* provides that a certificate of title is to be taken by a court to be prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner. This section also provides that a certificate of title may be challenged on grounds of fraud or misrepresentation to which the person is proved to be a party, or where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.
49. Further, the court in *Elijah Makeri Nyangw'ra vs Stephen Mungai Njuguna & Another* (2013) eKLR aptly held that the title in the hands of an innocent third party can be impugned if it is proved that the title was obtained illegally, unprocedurally or through a corrupt scheme.
50. It is well settled that where a party's title to land is challenged, as in this case, the burden of proof shifts to such a party to prove that they obtained the title legally. This is the position that was taken by the Court of Appeal in *Munyu Maina vs Hiram Gathiha Maina* [2013] eKLR where the court held as follows:

“We state that when a registered proprietor's root of title is under challenge, it is not sufficient to dangle the instrument of title as proof of ownership. It is this instrument of title that is in challenge and the registered proprietor must go beyond the instrument and prove the legality of how he acquired the title and show that the acquisition was legal, formal and free from any encumbrances including any and all interests which need not be noted on the register.”

51. In this matter, the Plaintiff has indicated that the suit land, LR No. 209/18172, was created after excision of 0.154 Ha out of L.R. No. 209/12058. The title to the latter property is dated 25<sup>th</sup> January 1994. The Plaintiff has not led any evidence to show how it acquired L.R. No. 209/12058 before surrendering the same to get a title for LR No. 209/18172. The Plaintiff never informed the court if it was the first party to be allotted the property or whether it bought the land from an allottee.
52. Indeed, if the Plaintiff had acquired Government Land, it was incumbent upon it to prove that the title was issued to it following the lawful process. The process of acquiring government land was set out in the case of *Nelson Kazungu Chai & 9 Others vs Pwani University* [2014] eKLR as follows:

“It is trite law that under the repealed Government Lands Act, a Part Development Plan must be drawn and approved by the Commissioner of Lands or the Minister for lands before any unalienated Government land could be allocated. After a Part Development Plan (PDP) has been drawn, a letter of allotment based on the approved PDP is then issued to the allottees.

131. It is only after the issuance of the letter of allotment, and the compliance of the terms therein, that a cadastral survey can be conducted for the purpose of issuance of a certificate of lease.”

53. Similarly, the Court of Appeal in *Joseph N.K. Arap Ng'ok vs Moiwo Ole Keiwua & 4 Others* [1997] eKLR, in considering how title is obtained where there is allocation or allotment of land stated that:

“It is trite that such title to landed property can only come into existence after issuance of letter of allotment, meeting the conditions stated in such letter and actual issuance thereafter of title document pursuant to provisions in the Act under which the property is held.”



54. While the Plaintiff has produced a Part Development Plan for Nairobi South No. 409 dated 25<sup>th</sup> May 1993, it did not adduce in evidence any letter of allotment or the subsequent cadastral map on which basis the title was issued to it. This court must therefore find that the Plaintiff has failed to prove the root of its title and cannot be said to be the lawful owner of the suit property.
55. In any event, the evidence before this court shows the suit land is a portion of what was initially known as LR No. 11308 which was acquired in 1972 by the government vide gazette notices numbers 3632 and 3633 dated 1<sup>st</sup> December, 1972 measuring 29.496 acres. After the acquisition of the said land, the Ministry of lands and Physical Planning prepared “The Nairobi South Structure Plan No. 42/28/85/9 dated 5<sup>th</sup> June, 1985 which was produced in evidence.
56. The said Nairobi South Structure Plan No. 42/28/85/9 shows the suit land falls inside the acquired and reserved land. The Plan shows the wide truncations which were provided to allow for adequate design of the junction as captured in the letter by the Ministry of Lands and Housing dated 18<sup>th</sup> September, 1990.
57. The suit property falls right inside the land that was acquired by the government in 1972 and captured in the 1985 Plan. Although it is contended by the Plaintiff that the 4<sup>th</sup> roundabout was an afterthought, this did not matter as the land acquired was enough to accommodate construction of the roundabout.
58. The government having acquired the land in 1972, and reserved it by way of the Plan of 1985, the said land became public land and was not available for allocation to the Plaintiff. The said land remained for public purpose at all times.
59. Considering that the Plaintiff did not prove that it acquired the suit property legally, and having been convinced that by the time the Plaintiff acquired the title document in respect of Land Reference No. 209/18172 the said land had been reserved for public purpose, it is the finding of this court that the Plaintiff has not proved its case on a balance of probabilities.
60. In the circumstances, the Plaintiff’s suit is dismissed with costs.

DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 27<sup>TH</sup> DAY OF APRIL, 2023.

**O. A. Angote**

**Judge**

**In the presence of;**

Mr. Osuye for Plaintiff

Mr. Atunga for Orego for 1<sup>st</sup> Defendant

Court Assistant - June

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ELC NO. 925 OF 2015

JUDGMENT

