



Onditi & another v Kenya Rural Roads Authority & 2 others; National Land Commission (Interested Party) (Environment & Land Petition E001 of 2023) [2023] KEELC 19058 (KLR) (19 July 2023) (Judgment)

Neutral citation: [2023] KEELC 19058 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT VIHIGA
ENVIRONMENT & LAND PETITION E001 OF 2023**

**E ASATI, J
JULY 19, 2023**

BETWEEN

EDWIN OMULAMA ONDITI 1ST PETITIONER

EMILLY M'MBONE MULINYA 2ND PETITIONER

AND

KENYA RURAL ROADS AUTHORITY 1ST RESPONDENT

WORLD SYSTEM ENGINEERING LIMITED 2ND RESPONDENT

VIHIGA DISTRICT LAND REGISTRY 3RD RESPONDENT

AND

NATIONAL LAND COMMISSION INTERESTED PARTY

JUDGMENT

1. By a Petition dated 5th January, 2023, the Petitioners, Edwin Omulama Onditi and Emily M'mbone Mulinya, sought for the following relief against the Respondents: -
 - i. A declaration that the Petitioners' rights enshrined in the Bill of Rights have been grossly violated and/or infringed by the 1st, 2nd and 3rd Respondents jointly and severally in the manner set out in the petition.
 - ii. A determination that the Petitioners discharged their obligations in terms of Section 18 of the *Land Registration Act* No.3 of 2012 by moving the 3rd Respondent to fix the boundary of the property title number North Maragoli/Kedoli/1422 on 22nd September, 2022 hence availing jurisdiction to this honorable court over any aspect of the said property pertaining to its boundary.



- iii. An order of Mandamus to compel the 3rd Respondent to fix the boundary of the property title number North Maragoli/Kedoli/1422 as before and also after the compulsory acquisition of the portion thereof that is the subject of the instant complaint at his own cost within thirty (30) days of the date of issuance of the decree herein.
 - iv. An order of prohibition directed at the 1st and 2nd Respondents either by themselves, through their servants and/or officers acting on their instructions restraining them from any and all activities and works pertaining to the construction, maintenance and/or improvement of the Mago-Malulu/Wangulu (E240) road pending the prompt payment of just compensation to the petitioners for the compulsory acquisition of the subject portion of the property title number North Maragoli/Kedoli/1422.
 - v. An order directing the 1st and 2nd Respondents and Interested Party jointly and severally to forthwith promptly pay in full just compensation in the sum of Ksh.622,667.50 to the Petitioners for the compulsory acquisition of the subject portion of property title number North Maragoli/Kedoli/1422 measuring 0.02 hectares.
 - vi. Interest on (v) above at commercial rates from 15th November, 2022 until payment is full.
 - vii. Exemplary damages in the sum of Kshs.1,00,000/- jointly and severally against the 1st, 2nd, and 3rd Respondents on account of their extremely harmful conduct herein.
 - viii. In default to (v), (vi) and (vii) above, an order of permanent injunction and/or prohibition to restrain the 1st, 2nd and 3rd Respondents herein either by themselves, through their servants and/or officers acting on their instructions from any of all actions pertaining to the constructing, maintaining or improving the Mago-Malulu/Wangulu (E240) road in a manner as to trespass onto property title number North Maragoli/Kedoli/1422 in contravention of the Constitution of Kenya and the applicable statutes.
 - ix. Costs of the petition.
2. The petition was founded on the Constitution of Kenya 2010 particularly: article 2(1) on supremacy of the Constitution which is binding upon “...all persons and all state organs at both levels of government” and no person may claim or exercise state authority except as authorized under it (Article 2(2)). That every person including the Respondents and the Interest Party are under a constitutional obligation to respect, uphold and defend the Constitution. That instructively, any act or omission in contravention of the Constitution is invalid by operation of Article 2(4) of the Constitution. Article 10 on the national values and principles of governance. Article 20(2) which permits every person to enjoy the rights and fundamental freedoms in the Bills of Rights. Article 20(3) which expressly mandates this Court to develop the law to the extent that it does give effect to a right of fundamental freedom, and to adopt an interpretation that most favours the enforcement of a right or fundamental freedom. Articles 21(1), Article 22(1) and 258(1)). Article 27(1) and (2) on equality of all persons; that all persons are equal before the law and are to enjoy full and equal rights and fundamental freedoms. Article 40 on the right to acquire and own property of any description in Kenya and prompt payment in full of just compensation for compulsorily acquired property. Article 64 on private land and Article 67 on the functions of the National Land Commission to amongst other functions, initiate investigations into present or historical land injustices, and recommend appropriate redress. Article 249(1) on the objects of Constitutional Commissions as being to protect the sovereignty of the people, secure observance by all State organs of democratic values and principles and to promote constitutionalism.



3. The Petition was also based on Part VIII of the Land Act No.6 of 2012 which codifies the mandatory procedure to be undertaken during the compulsory acquisition of interests in land. The petitioner relied on Sections 107,110, 111 112, 113 and 115 thereof. The petitioner further relied on Part II of the National Land Commission Act No.5 of 2012 and specifically Sections 5(1)(e), Sections 6 and 7 of the Kenya Roads Act No.2 of 2007, Sections 19, 20 and 21 of the Land Registration Act No.3 of 2012,

The facts.

4. The facts relied upon in the petition were that the Petitioners are the joint registered proprietors, owners and occupiers of all that parcel of land known as North Maragoli/Kedoli/1422 situated in Sabatia Sub-County of Vihiga County within the Republic of Kenya. That the suit property is located along the Mago-Malulu/Wangulu (E240) road toward the direction of Chamakanga Shopping Centre from Busali.
5. That confident that the suit property was not on the road reserve, the Petitioners declared a boundary dispute and wrote a letter dated 11th April, 2022 to the 3rd Respondent in that regard and expressly invited him to confirm whether the boundary thereof was fixed and if not, to fix it. The letter was copied to the 1st Respondent.
6. The 3rd Respondent replied to the letter dated 11th April, 2022 by requiring the Petitioners to make a formal application as by law required for the boundary of the suit property to be ascertained and fixed. That the Petitioners duly obliged and made the formal Application for ascertaining and fixing the boundaries of the land using the designated statutory Form LRA 23 and settled the relevant fees as directed by the 3rd Respondent.
7. The 3rd Respondent thereafter issued a Boundary Dispute Summons to the 1st Respondent with respect to the suit property which expressly indicated that the 3rd Respondent would be visiting the said land on 22nd September, 2022 between 10.00a.m. and 5.00a.m. to determine and fix its boundaries.
8. That on 22nd September, 2022, the 1st Petitioner personally went to the Vihiga Lands Registry to collect the 3rd Respondent and his team which included a Surveyor and two student surveyors under supervision of the latter. The 1st Petitioner was required to pay upfront an unreceipted sum of Kshs.5,000/= as facilitation fee (being Kshs.3000 to fuel the Government of Kenya Vehicle that would be used for the site visit and Kshs.2000 as “subsistence” for the Surveyor and his two students) before the entourage could leave for the suit property.
9. The team from the Vihiga District Land Registry as aforesaid together with the 1st Petitioner arrived at the suit property at 11.40a.m. and found the team from the 1st Respondent made up of the Project Engineer and two Engineers working under him namely Engineers Mike Outa and Fredrick Otieno, waiting.
10. That the team from the 1st Respondent insisted that they had no doubt that the suit property was not on the road reserve and that they could see it clearly from the area map.
11. That the Vihiga Lands Registry team held that since the 1st Respondent had indicated that they were not questioning the boundaries of the suit property, there was nothing left for them to do other than to call off the entire exercise and return to their office. They added, at the request of the 1st Respondent, that a report of the activities of that day be made available.
12. The 2nd Respondent thereafter seized a portion of the suit property that was admittedly not on a road reserve without notice to the Petitioners, without involving the Interested Party herein and without



adhering to eminent domain principles as captured under Article 40(3)(b)(i) of the Constitution of Kenya 2010.

13. That the Petitioners reached out to the 1st Respondent's officers on the ground (Engineer Mike Outa and Fredrick Otieno) for an explanation only to be told that the 2nd Respondent acted independently without consulting the 1st Respondent.
14. That the 1st Respondent is vicariously liable for the actions of the 2nd Respondent since the latter is its agent for purposes of the project.
15. The Petitioners reported the incident at the Chamakanga police post and the same was recorded as OB 05/17/11/2022 at 1345hours.
16. That the 1st and 2nd Respondents were continuing at full steam with the project works fully intending to complete, utilize and use the compulsory acquired portion of the suit property without paying compensation to the Petitioners as required under Part VIII of the Land Act no.6 of 2012.
17. That the Petitioner duly instructed professional Valuers to inspect the suit property and assess the value of the damage caused by the 1st and 2nd Respondent, for compensation purposes, who provided a Valuation Report in that regard.
18. The Petitioners did request the 1st Respondent to avail to them a copy of the contract between the latter and the 2nd Respondent, relevant to the instant dispute and which is contract NO. KeRRA/011/VHI/39/2019/20/087 but were ignored.

Response by the 1st Respondent

19. In reply to the petition, the 1st Respondent Kenya Rural Roads Authority, filed a Replying Affidavit sworn by Fredrick Otieno Okong'o the Project Surveyor on 22nd March 2023. Fredrick Otieno Okongo stated that he was aware that the 1st Respondent was undertaking the construction and/or upgrading to bitumen standards the Mago-Mululu-Wangulu road under contract number KeRRA/RWC 625. That the 1st Respondent contracted M'Big Company Limited to undertake the construction and/or improvement of the said road on behalf of the 1st Respondent. That although the 2nd Respondent did some maintenance works on the road to make it motorable in the year 2019, the 2nd Respondent had nothing to do with the works that led to the instant suit.
20. He stated further that on 6th April 2022 a consultative meeting was held at the Deputy County Commissioner's office Sabatia sub-county about the project whose works was about to commence. That thereafter public sensitization meetings on the project were done at various places.
21. That during the commencement of the project the petitioners declared a boundary dispute upon whose deliberations the petitioners were informed by the 1st Respondent that the road reserve was sufficient and that there was no need for additional land and specifically that the petitioners' land would not be interfered with. That similar information was given to the public generally.
22. That the contractor was also informed that the road reserve was sufficient for the works and that no additional land was required.
23. That the works done by the contractor on the Petitioners' land was without the authority of the 1st Respondent and against the earlier express instructions of the 1st- Respondent to the effect that there was no need for the expansion of the road.



24. That the 1st Respondent is not interested in exercising any compulsory acquisition of land and is fully aware of the procedure in law for acquisition of private land.
25. That the 1st Respondent is not vicariously liable for the actions of the contractor on the suit land because: -
 - a. a contractual relationship has not been established between the 1st Respondent and the 2nd Respondent so as to lay a basis for vicarious liability.
 - b. There is no evidence on record to show that the contractor (not party to the proceedings) was acting with express or implied instructions of the 1st Respondent. The acts of the contractor were done purely out of the scope of works in the contract as well as outside the express instructions of the 1st Respondent which instructions the Petitioners were aware of.
26. That the petitioners are not entitled to the relief sought. That they have failed to specifically state which constitutional rights have been infringed and in what manner they have been Infringed. That the petition does not meet the threshold for constitutional petitions.
27. That the petition is fatally defective as against the 1st Respondent and should be dismissed with costs to the 1st Respondent.
28. The 1st Respondent also filed a Supplementary Affidavit sworn by the same deponent on 6th April 2023. He stated that the contractor undertaking the road works the subject of the petition is M'big Company Limited and not the 2nd Respondent. That there is a billboard erected on the site to show that the contractor was M'Big Company Limited. That the petitioners never asked for a copy of the contract from the 1st Respondent. He stated further that there is no evidence that the suit property has been destroyed to the extent that it cannot be restored to original state. That if at all damage was occasioned on the suit property, the law provides for a remedy where the property cannot be returned to the original state which remedy is damages and not compensation for compulsory acquisition. That there has been no encroachment onto the suit property after the issuance of the court order.
29. The 2nd Respondent neither responded to the petition nor participated in its hearing and disposal.

Response by the 3rd Respondent

30. On behalf of the 3rd Respondent, the Attorney General filed Memorandum of Appearance dated 31st January 2023 and a Reply to Petition dated 2nd February 2023. The Attorney General stated that as much as the petitioners may have and enjoy such rights as are envisioned in the Constitution, the same have limitations as stated in article 24(1) (d) based on the need to ensure that the enjoyment of rights and fundamental freedoms by any individual does not prejudice the rights and fundamental freedoms of others. That the 3rd Respondent did not violate the stated provisions of the law. The 3rd Respondent further denied the facts relied upon in the petition. The 3rd Respondent denied that it either in the manner stated in the petition or otherwise breached the said constitutional provisions or in any way violated the rights of the petitioners. That the Petitioners have not demonstrated that they are deserving of the orders sought and prayed that the petition be dismissed.

Response by the Interested Party

31. The Interested Party filed grounds of opposition dated 9th February 2023 filed by Caroline Khasoa Advocate for the Interested Party in opposition to both an application filed by the petitioners and the



petition. The Interested Party stated that it had wrongly been joined in the petition as the petitioners raised no cause of action against it. That the mandate of the Interested Party as defined by article 67 of the Constitution is to manage public land on behalf of the national and county governments. That the petitioners' claim revolves around the issue of boundary dispute to which the Interested Party is not privy. That under section 18 of the Land Registration Act, it is the 3rd Respondent who has the mandate to handle boundary disputes. That the petitioners' claim for compensation is unfounded as compulsory acquisition of land is a legal process that is clearly outlined under Part VIII of the Land Act, 2012. That the petitioners have not produced any evidence to show that the suit land was compulsorily acquired hence they cannot claim compensation under the law. That the main issue of contention in the petition is the boundary dispute and not compulsory acquisition. That the government surveyor should be directed to file a ground status report on the dispute in line with sections 16, 17, 18 and 19 of the Land Registration Act. The Interested Party prayed that the Petition be dismissed.

Submissions

32. On 2nd of March 2023 directions were given that the petition be canvassed by way of written submissions. In compliance, written submissions dated 22/3/2023 and Supplementary written submissions dated 29th March 2023 were filed on behalf of the petitioners by the firm of Edwin Omulama and Associates Advocates acting for the Petitioners. Written submissions dated 6th April 2023 were filed by the firm of J. M. Rapando Advocate on behalf of the 1st Respondent.

Issues for determination

33. From the petition, the responses thereto by the Respondents and the submissions made, I gather the following as the issues for determination herein: -
- a. Whether or not the Interested Party was wrongly joined in the proceedings.
 - b. Whether or not the 1st Respondent is vicariously liable for the acts of the 2nd Respondent/contractor
 - c. Whether or not the petitioners' rights were violated
 - d. Whether or not there was compulsory acquisition of the petitioners' land.
 - e. Whether or not the petitioners are entitled to compensation for compulsory acquisition of their land.
 - f. Whether or not the petitioners are entitled to exemplary damages.
 - g. What order to make on costs.

Analysis and determination

34. On whether or not the Interested Party was wrongly joined in the proceedings, the National land Commission was joined in the petition as an Interested Party. It was described in paragraph 6 of the petition as a Constitutional Commission established at article 67 of the Constitution of Kenya 2010 with functions set out in the said constitution. It was the Interested Party's case that it was misjoined in the proceedings. A reading of the petition shows that there is no specific blame or complaint apportioned to the Interested Party. There is no evidence that the Interested Party had any role or obligation in the transaction the subject of the petition. I am in agreement with the submission of the Interested Party. I find that the Interested Party was wrongly joined in the petition and the proceedings herein.



35. On whether or not the 1st Respondent is vicariously liable for the actions of the 2nd Defendant or contractor, it was the Petitioner's case that sometime during the year 2021, the 1st Respondent erected a billboard at Mago announcing to the public that it had contracted the 2nd Respondent to carry out a routine maintenance and improvement of Mago-Malulu/Wangulu (E240) road under Contract No. KERRA/011/VHI/39/2019/20/087 ("the project"). A copy of the photograph of the said Bill Board was annexed to the Petition. It was further the Petitioners' case that on or about 15th November, 2022, and without notice, the 2nd Respondent using earth-moving machines brought down the gate to the suit property and posts supporting the barbed wire fence, uprooted the live cypress fence, hacked down a forest constituting at the very least 45 fully grown exotic trees that were planted thereon and encroached onto the suit land by 0.02 hectares. Further that the 1st Respondent was liable for the damage and loss suffered by the petitioners by reason of the unlawful actions of the 2nd Respondent as an agent of the 1st Respondent.
36. It was submitted on behalf of the petitioners that there was no doubt that it was the 1st Respondent who was undertaking the project. That there was no express pleading that the contractor was an independent contractor and that there existed principal-agent relationship between the 1st Respondent and the contractor.
37. The 1st Respondent's case as contained in the Replying Affidavit was that the 2nd Respondent was not the contractor for the project the subject of the petition. That although the 2nd Respondent did some maintenance works in the year 2019, it had nothing to do with the current project. That the rightful contractor is M'Big Company Limited.
38. The 1st Respondent further stated that there was a bill board on the site that had the name of the current contractor. That the petitioners did not ask for a copy of the contract so as to ascertain the details of the contractor and ascertain as to who was the contractor.
39. The 1st Respondent further averred that the contractor namely; M'Big Company Limited was given instructions by the 1st Respondent that the road reserve existing was sufficient for the contract works and that there was no need for additional land and hence should work within the confines of the road reserve. That the contractor went beyond the instructions and interfered with the petitioner's land and hence should be liable independently.
40. That the 1st Respondent is not vicariously liable because there is no contractual relationship between the 1st Respondent and the 2nd Respondent and secondly because the contractor on site exceeded his instructions.
41. It was submitted on behalf of the 1st Respondent that the contractor undertaking the project was not a party to the proceedings. Reliance was placed on the case of Civil Appeal 413 of 2017 *Board of Governors of St. Mary's School v Boli Festus sio* [2020] eKLR where it was held that a person employing another is not liable for the other's collateral negligence unless the relationship of master and servant existed between them at the material time, that the existence of the right of control is usually a decisive factor in determining whether the relationship of master and servant exists.
42. The 1st Respondent further submitted that the petitioner had failed to lay a foundation for vicarious liability by failing to identify a principal-agent or master-servant relationship between the 1st Respondent and the 2nd Respondent. That even if the rightful contractor had been sued the 1st Respondent would still not be liable for the acts of the contractor, as the contractor was an independent contractor. That the acts of the contractor were out of scope and against the express instructions of the 1st Respondent.



43. I have considered the pleadings and submissions on this issue. Vicarious liability is defined in *Black's Law Dictionary* 10th Edition by Bryan A. Garner as "liability that a supervisory party (such as an employer) bears for the actionable conduct of a subordinate or associate (such as an employee) based on the relationship between the two parties – also termed as imputed liability." The Court of Appeal, in the case of *Paul Muthui Mwavu v Whitestone (K) Ltd* [2015] eKLR held as follows:

"(21) Moreover, even assuming that the issue of vicarious liability was an issue for determination, in the Nuthu case, this Court applied *Morgans v Launchbury & Others* [1972] 2 ALL ER 607 in which it was stated:-

"In order to fix liability on the owner of a car for the negligence of a driver, it is necessary to show either that the driver was owner's servant or at the material time the driver was acting on the owner's behalf as his agent. To establish the existence of the agency relationship it is necessary to show that the driver was using the car at the owner's request express or implied or on his instructions and was doing so in the performance of the task or duty thereby delegated to him by the owner..."

(22) In the same Nuthu case the Court restated the law on vicarious liability adopting the statement of Newbold P in *Muwonge v A.G. of Uganda* [1967] E A 17 as follows:

"The law is, so long as the driver's act is committed by him in the course of his duty, even if he is acting deliberately, wantonly, negligently, or criminally, or even if he is acting for his own benefit or even if the act is committed contrary to his general instructions, the master is liable."

44. It is not disputed that the project was being undertaken by the 1st Respondent as the principal and that the 1st Respondent engaged a contractor to do the work. The contract document was not availed to demonstrate that indeed the contractor engaged was not the 2nd Respondent. It is not denied by the Respondents that the billboard whose photograph was attached to the petition was erected by the 1st Respondent, was present at the site of the project as at the time when the acts complained of were committed and as at the time of filing the petition. The contents of the said billboard and particularly that the 2nd Respondent was the contractor were not denied. It is agreed that the contractor engaged by the 1st Respondent trespassed onto the suit land and caused the damage complained of in the course of constructing or upgrading the road, the subject matter of the contract.

45. On the basis of the pleadings, evidence placed before the court, the submissions made and decided cases, I find that the 1st Respondent is vicariously liable for the actions of the contractor. The contractor was the agent of the 1st Respondent. There is no evidence that the contractor was an independent contractor.

46. On whether or not the petitioner's rights were violated, one of the reliefs sought in the petition is a declaration that the Petitioners' rights enshrined in the Bill of Rights have been grossly violated and/or infringed by the 1st, 2nd, and 3rd Respondents jointly and severally in the manner set out in the petition. It is not denied that the petitioners are the registered owners of the suit land hence entitled to protection under article 40 of the *Constitution*. It is not denied that the contractor, acting as an agent of the 1st Respondent unlawfully encroached onto the suit land and destroyed property on the suit



land thereby denying the petitioners' quiet enjoyment thereof and the protection of the law. I find that the petitioners' right to property as provided for and protected under article 40 of the Constitution were violated.

47. On whether or not there was compulsory acquisition of the petitioners land, it was the petitioners' case that on or about the 15th November, 2022 and without notice to the Petitioners and nor permission from the 3rd Respondent, the 2nd Respondent (acting on behalf of the 1st Respondent) using earth-moving machines brought down the gate to the suit property and posts supporting the barbed wire fence, uprooted the live cypress fence, hacked down a forest constituting over 40 fully grown exotic trees that were planted thereon and encroached onto the suit land by 0.02 hectares. I agree with the submission by Counsel for the Interested Party that compulsory acquisition of land is a legal process that is clearly provided for by law. The process is outlined in Part VIII of the Land Act No.6 of 2012. No evidence has been placed before this court that the process was ever initiated or attempted by the Respondents. There is no evidence that the Respondents have appropriated the portion of land trespassed onto for construction of the road. The 1st Respondent expressly stated that it had no need for extra land for the project as the road reserve was sufficient and hence had not compulsorily acquired the suit land or any portion thereof. I find that the claim that there was compulsory acquisition has not been proved.
48. On whether or not the petitioners are entitled to compensation for compulsory acquisition of land, the Petitioners averred that Article 40(1) and (3)(b)(i) of the Constitution of Kenya, 2010 read with Part VIII of the Land Act No.6 of 2012 requires the Interested Party to make prompt payment of just compensation to the Petitioners and or into a fund for their benefit before the 1st and 2nd Respondent could take possession and or commence the works in question and in default, that interest shall accrue on the compensation amount at commercial rates from the date of taking possession. That this has not been done and that the Petitioners risk losing interest on the unpaid funds unless the same are paid and or secured. The Petitioners claimed compensation amount in the sum of Kshs.622,667.50/=.
49. Having found that there was no compulsory acquisition, there is no basis for an order for payment of compensation for land allegedly compulsorily acquired. What I find the petitioners to be entitled to is the value of the damaged property. The valuation report gives the details of the property destroyed and the value of each item inclusive of the value of the land allegedly compulsorily acquired all valued at kshs 622, 667.50 This valuation was not challenged. I find that this amount is payable less the value of the land assessed at Kshs.245,000/= . Hence leaving a balance of Kshs.377,66.50 payable to the Petitioners.
50. On whether or not the petitioners are entitled to exemplary damages, the petitioners claim for Kshs.1000000 exemplary damages. Exemplary damages are awarded where the defendant has calculated that its conduct will result in profit for himself and may well exceed the compensation payable to the claimant. See cases of *Benedict Munene Kariuki & 14 others v the Attorney General* high Court petition No 722 of 2009 and *D. K. Njagi Marete v Teachers service Commission* NRB CA civil Appeal No 316 of 2013 [2020] eKLR. I have considered the evidence on record I find no basis for awarding exemplary damages. The actions of the 2nd Respondent/contractor were not aimed at earning any profit for the contractor or 1st Respondent.
51. There is evidence that the fence and gate to the suit land were destroyed. This was admitted by the 1st Respondent who however blamed the contractor for the same. There is need for the 3rd Respondent to restore the boundary as it was before the destruction by the contractor.



52. In conclusion I find that the petition has succeeded partly, allow the same and make the following orders:

- i. The Interested party was wrongly joined in these proceedings.
- ii. An order of Mandamus, compelling the 3rd Respondent to fix the boundary of the suit land as it was before the actions complained of in the petition.
- iii. An order for payment of Kshs.377,667.50 being the value of the destroyed property.
- iv. An order of permanent injunction restraining the 1st and 2nd Respondents by themselves, their servants or agents from constructing, maintaining or improving Mago-Mululu-Wangulu(E 240) Road in a manner to trespass onto the suit property namely; North Maragoli/Kedoli/1422.
- v. Costs of the petition are awarded to the petitioners.

Orders accordingly.

JUDGEMENT DATED AND SIGNED AT KISUMU AND DELIVERED VIRTUALLY THIS 19TH DAY OF JULY, 2023 THROUGH MICROSOFT TEAMS VIDEO CONFERENCING PLATFORM.

E. ASATI

JUDGE

