



REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Petition 552 of 2009

BERNARD MWANGI MBAI PETITIONER

AND

THE MINISTER FOR ROADS 1ST RESPONDENT

THE MINISTER FOR LANDS 2ND RESPONDENT

COMMISSIONER OF LANDS 3RD RESPONDENT

ATTORNEY GENERAL 4TH RESPONDENT

JUDGMENT

1. The petitioner's claim is that in the year 2008, some people who identified themselves as being employees/servants and or agents of the 1st respondent, entered the petitioner's land known as NAIROBI/BLOCK 126/1752 situated in Kamulu area within Nairobi measuring 4.071 Ha.
2. The petitioner avers that the 1st respondent invaded the property, dug a road right it thereby causing substantial damage to the property itself, the fence, trees and horticultural crops thereon. The 1st respondent then off-loaded trucks of stones and other road building material.
3. The petitioner states that this entry was without notification and was contrary to the provisions of the ***Land Acquisition Act (Chapter 295 of the Laws of Kenya)*** and therefore a breach of **section 75(1)(2)** of the former Constitution which guarantees a person from arbitrary deprivation of private property.
4. Three affidavits have been filed on behalf of the respondents. The respondents do not deny that they entered the suit property. Thomas Gaciri Gacoki, the Manager (Survey) at the Kenya National Highway Authority, confirms that the land had a track enough to accommodate passage of people, animals and motor vehicles before the construction of the Great Eastern. He denies that there were any developments on the land and nothing had been planted on it. The two other affidavits are sworn by Joseph Mwaura and George Kioni, who are neighbours of the petitioner. They depone to the fact that the

land had a track on it and it had no indigenous trees or horticultural crops.

5. It is not disputed that the petitioner is the registered proprietor of the suit property and Ms Muchiri, counsel for the respondents, properly conceded this position. She referred a letter written by the Kenya Urban Road Authority, dated 2nd July 2012 to the Office of the Attorney General, suggesting that the acquisition process for the property be put in motion to regularise the acquisition.

6. I am aware that parties have been negotiating the matter and in order to bring this matter to a close and in the circumstances, the petition is allowed to the following extent;

(1) I declare that the petitioner is the registered proprietor of the property known as LR NAIROBI/BLOCK 126/752.

(2) The respondents shall take such steps as are necessary to acquire the petitioner's property under the *Land Acquisition Act (Chapter 295 of the Laws of Kenya)*.

(3) The 1st respondent shall bear the costs of this petition.

DATED and DELIVERED at NAIROBI this 25th day of October 2012.

D.S.MAJANJA
JUDGE

Ms Omwenga instructed by W. G. Wambugu and Company Advocates for the petitioner.

Ms E. Muchiri, Litigation Counsel, instructed by the State Law Office for the respondents.