



REPUBLIC OF KENYA



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Nakitare & 18 others v Kenya National Highway Authority & 3 others (Constitutional Petition E003 of 2024) [2025] KEELC 5219 (KLR) (3 July 2025) (Judgment)

Neutral citation: [2025] KEELC 5219 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT BUNGOMA

CONSTITUTIONAL PETITION E003 OF 2024

EC CHERONO, J

JULY 3, 2025

**IN THE MATTER OF ARTICLES 1(1), 2 (1), 10,19(2) 21(1), 40(1), (3),
47 (9), 64, 67 AND 162 OF THE CONSTITUTION OF KENYA 2010.**

AND

IN THE MATTER OF SECTIONS 113,115,125 &128 THE LAND ACT

AND

IN THE MATTER OF SECTION 4 OF THE FAIR ADMINISTRATIVE ACT, 2015.

AND

**IN THE MATTER OF COMPULSORY ACQUISITION OF LAND ALONG KISUMU-KITALE
ROAD AT MISIKHU MARKET DESCRIBED AS WEBUYE-KITALE (A1) ROAD PROJECT.**

BETWEEN

ROBERT NAKITARE 1ST PETITIONER
WINFRED OKINDA 2ND PETITIONER
PETER S MURUNGA 3RD PETITIONER
CHRISTOPHER K MUTORO 4TH PETITIONER
RONALD MOSES MUUCHI 5TH PETITIONER
JOSEPH K WAMALWA 6TH PETITIONER
BEVERLYNE N JUMA 7TH PETITIONER
JOHN WAFULA SIMIYU 8TH PETITIONER
JOHN KHAMALA 9TH PETITIONER
MERCY KARANI WANYAMA 10TH PETITIONER
ERICK ANAKUTWA SITANDA 11TH PETITIONER



HERBERT NAKITARE	12 TH PETITIONER
JAPHETHER SASAKA	13 TH PETITIONER
ALEX W SIMIYU	14 TH PETITIONER
JORAM SITANDA	15 TH PETITIONER
HUMPHERY CHELOTI MUKHALUSIA	16 TH PETITIONER
EMMANUEL S SIMIYU	17 TH PETITIONER
EVANS MURUMBA	18 TH PETITIONER
ANDREW SITATI WEPHUKULU	19 TH PETITIONER

AND

KENYA NATIONAL HIGHWAY AUTHORITY	1 ST RESPONDENT
NATIONAL LAND COMISSION	2 ND RESPONDENT
THE LAND REGISTRY BUNGOMA COUNTY	3 RD RESPONDENT
THE HON ATTORNEY GENERAL	4 TH RESPONDENT

JUDGMENT

1. Vide a petition filed on 13/06/2024 and Amended on 15/08/2024, the Petitioners herein seek the following orders;
 - a. A declaration that the title deeds held by the Petitioners and issued by the 3rd Respondents are valid.
 - b. A declaration that the intended demolition of the petitioner’s developments on the road name/ code Webuye-Kitale (A1) at Misikhu Market is unconstitutional.
 - c. An order for permanent injunction restraining the Respondents from interfering with the petitioner’s quiet enjoyment of their respective parcels of land at Misikhu.
 - d. Costs of the petition.
2. The petition is supported by the affidavit of Andrew Sitati Wephukulu, the 19th Petitioner on his own behalf and that of his co-Petitioners sworn on 15/08/2024. The said Andrew Sitati Wephukulu deposed that the Petitioners are the registered owners of properties along the road designated as Webuye-Kitale (A1) at Misikhu Market, having acquired the same as bona fide purchasers for value without notice from the original owners. That at the time of acquisition, there was no encumbrance registered on the land and that they did due diligence by obtaining the map of the area which showed the respective titles and actual acreage on the ground.
3. It was further deposed that the suit properties have been developed with the approval of various government institutions and that it was not until recently that they received demolition notices from the 1st Respondent who did not accord them any audience therefore, denying them fair administrative justice. The Petition is anchored on the provisions of Article 40(3), 47 (1), 67 (1), 10 (1) and 21 (1) of *the Constitution*.



4. In opposition to the petition, the 1st Respondent filed a Replying affidavit sworn by Joash K.Ruto on 16/07/2024 and deposed that sections 3,4,22,23 and 24 of the Roads [Act No. 2 of 2007](#) stipulates the mandate of the 1st Respondent. He stated that in the years 1973 and 1975, the government through compulsory acquisition acquired specific portions of the adjacent parcels of land which share a common boundary with the Kisumu-Kakamega-Webuye-Kitale Highway. He deposed that the respective owners were duly compensated in that exercise and the acquired portions of land ultimately excised from the various parcels of land making the parcels part of the road reserve resulting to the increase of the road from the existing 30metres to 60metres in width with the exception of the section of the road along old Misikhu market centre, Wabukhonye market center and Lugulu Market center which expanded to 40metres.
5. The 1st Respondent enumerated and attached documents of the acquisition of the Kitale-Kiminini-Webuye (Broderick falls) Road. That the parcels of land claimed by the Petitioners which are a sub-division of the original parcel i.e. Ndivisi/Makusela/886 which had been registered in the name of Jacktone Obaye Mutoro share a common boundary with the Kisumu-Kakamega-Webuye-Kitale Highway. That Land parcel no. Ndivisi/Makusela/886 was an earlier sub-division of Ndivisi/Makusela/762 which was registered in the name of Ismael Mutoro.
6. He deposed that from the reading of the mutation forms of land parcel no. Ndivisi/Makusela/762 to Ndivisi/Makusela/886 and 87 and the resultant 20 portions i.e Ndivisi/Makusela/1855 to 1874, it is apparent that despite the letter from the Commissioner of lands dated 16/2/1976 forwarding the acquisition of the relevant portions of land seem not to have been amended to reflect in the record. That if the Petitioners had gone beyond the certificate of search and looked into the history of the parcels of land, they would have discovered the earlier compulsory acquisition. He stated that the initial owners did not surrender the compulsorily acquired portions of land on the ground and continued to occupy and sell the portions. That the issue before court is a boundary dispute issue which is the mandate of the Land Registrar pursuant to Section 18(1) & (3) and 19(1), (2) & (3) of the [Land Registration Act](#).
7. It was also deposed that this petition arose after a public sensitization campaign program that took place in December 2023 which brought to light the petitioner's encroachment into the road reserve which resulted to a report presented to their headquarters in Nairobi and subsequently they marked the encroachment areas and issued notices of intended demolition of the illegal structures. That the road maintenance exercise has now reached the affected area and it requires vacant possession to complete the project. It was stated that this is a national exercise for the benefit of the entire country and the neighboring counties using the road and therefore, they should not be stopped as the Petitioners have no legitimate claim of right over the affected portions.
8. By way of a response and opposition to this Petition, the 2nd Respondent filed a Replying affidavit sworn by one Brian Ikol, Director Legal Affairs and Disputes Resolution on 20/01/2025 in which he deposed that the 2nd Respondent is established under Article 67 (1) of [the Constitution](#), 2010 and is operationalized by the National Commission [Act, No. 5 of 2010](#). That its mandate is basically to acquire land for public use on behalf of both the national and county governments upon request by either the Cabinet Secretary or the County Executive Committee Member as the case may be. That they have never received such a request from either of the governments in relation to the suit properties and neither have they been involved in the issuance of any notice with regard to the alleged demolitions.
9. The 3rd and 4th Respondents also opposed this petition vide a Replying affidavit filed through the office of the Attorney General where they deposed that this petition does not specify the manner in which the Petitioners' alleged rights have been infringed as set out in the case of Annrita Karimi Njeru v Republic (1979) KLR 154. They urged this court to dismiss the petition.



10. When this Petition came up for directions, the parties agreed that the same be canvassed by way of written submissions.
11. The Petitioners filed their submissions dated 16/04/2025 in which they raised three issues. The first issue is Whether the Petitioners are bona fide purchasers for value without notice. On this issue, it was submitted that they acquired their titles legally, having engaged all pertinent agencies and that their titles have not been subjected to any challenge. They referred the definition of a bona fide purchaser as defined in the Black's Law Dictionary and the cases of *Katende V. Harider & Company Ltd* (2008) 2 EA 173 and *Munyu Maina v. Hiram Gathiha Maina* Civil Appeal No. 239 of 2009 (2013) Eklr.
12. The second issue submitted on was whether the government acquired specific portions of the adjacent parcels of land which share a common boundary with Kisumu-Kakamega-Webuye-Kitale Highway. It was submitted that the allegations by the 1st Respondent that they compulsorily acquired the disputed properties has not been proved to the required standard. They argued that when they acquired their respective portions, the Registry map did not indicate that their parcels harbour a road reserve. That as noted by the 1st Respondent, the alleged rectification which was supposed to have been done in 1978 when the disputed portions were allegedly acquired compulsorily was not done.
13. They contend that it is the responsibility of the 3rd Respondent to maintain accurate and up-to-date registers and maps to facilitate smooth land transactions. As such, they urged the court to protect them from suffering prejudice resulting from the 3rd Respondent's negligence. The Petitioners stated that they had submitted a petition to the 1st Respondent outlining their grievances and requesting an opportunity to be heard. However, they argued that their efforts have been frustrated with the Respondents determined to demolish their developments. Consequently, they submitted that they have been denied their right to fair administrative action as guaranteed under Article 47 of *the Constitution* of Kenya, 2010.
14. Lastly, the petitioners submitted that they are entitled to the reliefs sought, having proved that their titles are not encumbered and the accurate position is as shown in the registry map. They asked this court to allow their petition as prayed.
15. The 2nd Respondents filed submissions dated 05/05/2025 where she raised three issues. The first issue is whether there was a compulsory acquisition by the 2nd Respondents. They urged the Court to consider their mandate as provided for under Section 107 (1) of the *Land Act*, 2012 and the procedure of acquisition of land pursuant to Section 107 (5) of the *Land Act*. They submitted that they did not receive a request for acquisition of the suit properties and none of the parties have produced evidence to that effect. Secondly, they submitted on whether there is any cause of action against the 2nd Respondent. It was therefore their submission that they did not play any role in any of the allegations that gave rise to this petition. Reliance was placed in the case of *Attorney General & Another v. Andrew Maina Githinji & Another* (2016) eKLR. The third issue is whether the Petitioners are entitled to the prayers and reliefs sought and submitted that no evidence has been adduced to prove that the 2nd Respondent took part in any of the allegations in the petition.
16. The 1st Respondent filed submissions and raised two issues for determination as follows;
 - i.) Whether the Petitioners have proved to the required standard of proof that their parcels of land as claimed to have been encroached by the 1st Respondent are within their recognised boundaries as set out in the relevant maps of the area, to constitute a legitimate basis for the reliefs sought before this court?



- ii.) Whether upon compulsory acquisition by the Government and finalisation of the same by way of compensation of the three parent parcels of land to the original owners and the land ceded to the Government, any subsequent purported subdivisions and transfer of the same portions already acquired by the Government of Kenya would entitle the Petitioners the right as ‘innocent purchasers of the said portions of land’ to maintain any of the reliefs sought in this Petition?
17. On the first issue, the 1st Respondent submitted that they have produced a survey report and map showing the extent of the road reserve encroached by the structures erected by the Petitioners and that the Petitioners have not produced a contrary survey map or report, nor otherwise referred the boundary dispute between their parcels and the road reserve to be determined by the Land Registrar. They argued that on a balance of probabilities, their claim on encroachment of a road reserve remain undisputed and therefore, deemed as duly proved. They submitted that the Petitioners’ claim of alleged encroachment remain an allegation in the absence of cogent evidence. Reliance was placed in the case of *Nganga & 12 other v Kahu* (Environment and Land Appeal EO98 of 2022) [2024] KEELC 7067 (KLR). They further argued that the only way the Petitioners’ claim would be sustained would have been through a boundary determination report by the Land Registrar as provided for under Section 18 of the *Land Registration Act* and Regulation 40 of the Land Registration (General) Regulations 2017. The 1st Respondent challenged the jurisdiction of this court to handle this Petition which in their view, ought to have been referred to the Land Registrar pursuant to Section 18 of the *Land Registration Act* as read together with Regulation 40 of the Land Registration (General) Regulations, 2017. They cited the case of *George Kamau Macharia v. Dexka Limited* (2019) eKLR.
18. On the second issue, the 1st Respondent submitted that the Petitioners are not entitled to any of the reliefs sought in this Petition on grounds that this would be a second claim for compensation in respect of the same portion of land over which the 1st Respondent or its predecessor in title had already compensated the then registered owners at the time of its compulsory acquisition for that very public purpose. Reliance was placed in the case of *Cycod Prcpedies Ltd, versus Hon. Attorney General & 4 Others*, (2013) eKLR. It was further submitted that having been compulsorily acquired, those portions of land no longer became part of land owned by the original owner or his successors in title hence, he could not validly sell or transfer that compulsorily acquired portion to the Petitioners, since he could not in law pass a good title. They contend that the Petitioners have therefore, no claim of right over the suit properties under sections 27 of the Registered *Land Act* as repealed or under sections 24 and 25 of the Registration of *Land Act*. They referred to the case of; *Laly Furnishing House Ltd. versus Kenya National Highway Authority & Others Nairobi Milimani ELC. No. 14 of 2014*, *Veronica Waithira & Others versus Kenya National Highway Authority’ Nairobi ELC NO 911 of 2013* and *Unilever Teo Kenya Ltd versus National Land Commission & 2 Others*, (2017) eKLR

Legal Analysis and determination.

19. I have considered the Petition, the supporting affidavit, the Replying affidavits in opposition thereto, the submissions by the parties and the applicable law. The issues that in my view commend for determination in this Petition are as follows:
- a. Whether this petition has met the constitutional threshold.
 - b. Whether the petitioner’s constitutional rights on fair administration action and rights to property have been violated by the Respondents?
 - c. Whether the petitioners are entitled to the constitutional reliefs sought?



- d. Who will bear the costs of this Petition?
20. A party invoking the special powers of a constitutional court based on breach of the Bill of Rights has to meet the procedural requirements as set out under Rule 10 of *the Constitution* of Kenya (Protection of Fundamental Rights & Freedoms Protection Practice and Procedure Rules 2013). This provision requires a petitioner to state the facts relied upon, constitutional rights and freedoms infringed, violated or threatened, nature of injuries or damage suffered, the capacity in which the petition is brought, civil or criminal proceedings related to the matter, and the reliefs sought.
21. Looking at the pleadings by the Petitioners, I am of the considered view that the issues raised in this Petition would have been easily raised in a regular civil suit. I also note that despite this Petition not raising with precision specific constitutional/legal question with proper facts or detailed allegations of breach or nature of injuries, it can be discerned that the Petitioners claim is for violation of their constitutional rights, fair administration action and rights to property. Further, the Respondents through their replying affidavits understood the Petitioners' claim and/or cause of action and were therefore able to respond to the same and pleaded justification for their actions.
22. The Petitioners have raised two allegations on fair administration action under Article 47 and deprivation of property under Article 40 (3) of *the Constitution*. In my view, the petition herein has loosely met the constitutional threshold as held by the Court of Appeal in *Mumo Matemu vs Trusted Society of Human Rights Alliance and 5 others* (2013) eKLR.
23. The 1st Respondent also challenged this Court's jurisdiction arguing that the issues before this Court ought to have been placed before the Land Registrar for determination under Section 18 of the *Land Registration Act*, 2012. However, having considered the Petitioners claim, it is apparent that this Petition is not based on a boundary dispute but on a claim for unlawful acquisition of what they claim to be their land by the Respondents without due process. They have also sought for injunctive orders which cannot be granted by the Land Registrar. Therefore, the 1st Respondent's objection to the jurisdiction of this Honourable Court is untenable.
24. The second issue for determination is whether the Petitioners have established that their constitutional rights have been violated, infringed and/or threatened as claimed
25. In this petition, the Petitioners complained of an alleged encroachment by the 1st Respondents and the issuance of a notice for demolition of their structures erected along Webuye-Misikhu road to the extent that this interfered with their constitutional rights to ownership of land and properties. The Petitioners allege that the Respondents failed to accord them a fair hearing, acquiring their land compulsorily without compensation or due process, depriving them of their property without compensation and failing to accord them equal rights to protection of the law and the right to fair administrative action. They therefore sought for declaratory orders, a permanent injunction and costs.
26. In support of their claim, they produced various title deeds, a list of all the Petitioners and the portions claimed, a sale agreement between the 19th petitioner and one Vincent Asawel Wamalwa , a copy of mutation form for L. R No. 886 and demolition notices. The said demolition notices are dated 22/05/2024 and addressed to Barnabas Walumbe, Andrew Wepukulu (19th Petitioner) and Evans Murumba (18th Petitioner). The subject of the notices was "Notice of intended demolition/removal of encroachment on classified road reserves on class A, B & S Roads." It is imperative to note that not all Petitioners produced title deeds. The titles produced are as follows;

Title No. Registered owner Sub-division of;

Ndivisi/Makuselwa/1856 Andrew Sitati Wepukulu 886



Ndivisi/Makuselwa/996 Nancy Wanjala Wekesa 507
Ndivisi/Makuselwa/1331 John Wanjala Khamala 1239
Ndivisi/Makuselwa/1005 John Wafula Simiyu 506
Ndivisi/Makuselwa/1868 Soita Emmanuel Simiyu 886
Ndivisi/Makuselwa/1003 Ronald Moses Muuchi 506
Ndivisi/Makuselwa/1861 Alex Wachie Simiyu 886
Ndivisi/Makuselwa/1819 Japhether Sasaka 1109
Ndivisi/Makuselwa/2147 Erick Anakutwa Sitanda 2034
Ndivisi/Makuselwa/1863 Mercy Karani Wanyama (Illegible)

27. The 1st Respondent denies that the Petitioners' rights have been violated and that it is the Petitioners who have unlawfully encroached on Government land. They argued that specific portions of the adjacent parcels of land which share a common boundary with the Kisumu-Kakamega-Webuye - Kitale Highway were surveyed and published for compulsory acquisition and were acquired by the Government of Kenya from the registered proprietors by then who were duly compensated and the said portions were excised to constitute road reserves. That the Ndivisi-Makuselwa location was affected by the said acquisition where the affected owners were sensitized and compensated as was required under the then applicable law.
28. In support of their assertions, the 1st Respondent produced copies of land acquisition survey drawings, A letter from the Commissioner of Lands to the District Commissioner, Bungoma dated 16/08/1974 directing him to mobilize Chiefs of the affected areas and Land parcels to inform the affected persons of the valuation exercise, gazette notice published on 27/09/1974 notifying the public of the intention to acquire the gazetted parcels, letters dated 03/10/1974 and 06/11/1974 between the Commissioner of Lands and Settlement Office on facilitation of public inquiry hearings, letters dated 21/11/1974,16/12/1974, 18/02/1975, 27/02/1975 and 16/12/1975 calling for settlement cheques and copies of the subsequent payment vouchers in settlement thereof, mutation forms for the subdivision of the original parcel i.e Ndivisi/Makuselwaw/762 in the name of Ismael Mutoro into two portions being L.R NO. Ndivisi/Makusela/886 in the name of Jackton Obaye Mutoro and 887 and the subsequent sub-division of Ndivisi/Makuselwa/886 into Ndivisi/Makuselwa/1855,1856,1857,1858,1859,1860,1861,1862,1863,1864,1865,1867,1868, 1869,1870,1871,1872,1873 and 1874 and lastly a letter dated 25/01/2024 forwarding a report dated 25/01/2024 which reported that the road reserve had been encroached upon, identified the areas that had been affected by the said encroachment and the cause of action which are the notices for demolition.
29. The 2nd Respondent on her part denies being part of any acquisition and this court takes judicial notice of the fact that the acquisition of the suit land was done in the year 1974, prior to its establishment under Article 67 (1) and its implementation by the National Land Commission (NLC) Act, 2012, the *Land Act*, 2012 and the *Land Registration Act*, 2012. The Court however notes that the 2nd Respondent has been enjoined for the crucial role it plays in land acquisition on behalf of both the County and National Government's. On their part, the 3rd and 4th Respondents did not file any response nor tender any evidence or file submissions.
30. It is the Petitioners' contention that they are bonafide purchasers for value and that they exercised due diligence in ascertaining the validity and propriety of the suit properties before sale and that they were



unaware of the alienation of part of the properties as a road reserve and therefore, their rights and interests over the suit properties merits protection by the court under the law and in particular the provisions of Article 40 of *the Constitution*, 2010. Having sought for such declaratory orders, it was incumbent upon the Petitioners to establish and satisfy certain known principles which underpin a claim for bona fide purchase for value.

31. I have examined the documents produced by the Petitioners viz-a-viz those produced by the 1st Respondent in rebuttal and I note that the Petitioners' titles were resultant sub-divisions of L.R No. Ndivisi/Makuselwa/506, L.R No. Ndivisi/Makuselwa/507 and L.R No. Ndivisi/Makuselwa/762. The said parcels from the documents produced by the 1st Respondent were at the time of the said acquisition registered in the names of Clement Wabwoba, Julius Wanjara and Ishmael Mutoro. The 1st Respondent has set out the history of the parcels in their response to the petition. The 1st Respondent has demonstrated how the authority guided by the provisions of the Land Acquisition *Act, 1968 (No.47 of 1968)* (repealed) notified the affected proprietors of their intention to acquire the various portions, a sensitization was done through the local authorities, a joint survey leading to fresh survey drawings upon the intended acquisition and finally compensation of the affected proprietors.
32. Upon acquisition of the subject portions, it is my considered view that the 1st Respondent fulfilled its statutory obligation by forwarding the relevant compulsory acquisition documents including the survey drawings to the appropriate land departments and offices for implementation of the changes. It therefore follows that once such documentation is provided, it falls within the mandate of the Land Registrar, a government officer and the custodian of records of land situate in Kenya as established under Section 6 of the *Land Registration Act*, 2012. The Land Registrar is mandated to maintain proper, credible, verifiable records which includes updating the land register, amending registry maps to reflecting any change in interests in the register. See Section 79 (1) of the *Land Registration Act*, 2012).
33. It follows therefore that upon acquisition, the affected parcels vested in the acquiring authority i.e the government for use by the 1st Respondent pursuant to Section 19 and 20 of the Land Acquisition *Act, 1968 (No.47 of 1968)* (repealed), which states as follows;

19.

- (1) After the award has been made, the Commissioner shall take possession of the land by serving on every person interested in the land a notice that on a specified day, which shall not be later than sixty days after the award has been made, possession of the land and the title to the land will vest in the Government.
- (2) In cases of urgency, the Minister may direct the Commissioner to take possession of uncultivated or pasture or arable land upon the expiration of thirty days from the date of publication of the notice of intention to acquire, and on the expiration of that time the Commissioner, notwithstanding that no award has been made, shall take possession of that land in the manner prescribed by subsection (1).
- (3) Upon taking possession of land under subsection (1) or subsection (2), the Commissioner shall also serve upon—
 - (a) the registered proprietor of the land; and
 - (b) the Registrar, a notice that possession of the land has been taken and that the land has vested in the Government.



- (4) Upon taking of possession, the land shall vest in the Government absolutely free from encumbrances.

20.

- (1) Where the documents evidencing title to the land acquired have not been previously delivered to him, the Commissioner shall in writing require the person having possession of the documents of title to deliver them to the Registrar, and thereupon that person shall forthwith deliver the documents to the Registrar.
- (2) On receipt of the documents of title, the Registrar shall—
 - (a) where the whole of the land comprised in the documents has been acquired, cancel the documents;
 - (b) where only part of the land comprised in the documents has been acquired, record upon the documents that so much of the land has been acquired under this Act and thereafter return the documents to the person by whom they were delivered, and upon such receipts, or if the documents are not forthcoming, cause an entry to be made in the register recording the acquisition of the land under this Act.

34. As such, the acquired portions of land ceased to be available for private alienation or sale. Essentially, such acquisition is an overriding interest pursuant to section 30 of the RLA, which provides as follows:

Unless the contrary is expressed in the register, all registered land shall be subject to such of the following overriding interests as may for the time being subsist and affect the same, without their being noted on the register –

- (a) ...
- (c) rights of compulsory acquisition, resumption, entry, search and user conferred by any other written law;

35. Therefore, any purported sale of the affected portions after acquisition is unlawful, null and void ab initio. It is my view that the then registered proprietors who were aware of the acquisition had a duty to ensure the delineation of the residual land accurately. Failure by the then registered owners to do so coupled with the act of selling land already acquired by the government constitutes a deliberate misrepresentation amounting to fraud. It is trite law that fraud vitiates all transactions. Essentially, the subsequent sub-divisions and sale of the properties including the acquired portions was an illegality and the vendors did not have any proprietary rights capable of passing to the Petitioners herein. Simply put, they lacked a valid title to the acquired portions and were therefor incapable of passing a good title as far as the said acquired portions are concerned.

36. While the doctrine of bona fide purchaser is a recognized shield for innocent purchasers under Section 26(1)(b) of the *Land Registration Act*, such protection is not available under Article 40(6) of *the Constitution* of Kenya 2010 or where the purchaser fails to conduct due diligence. It is expected, particularly where land is located along a public road, that a prudent purchaser would inquire into whether the land lies within a road reserve or buffer zone, which are typically subject to restriction.



37. In the *Dina Management Limited v County Government of Mombasa & 5 others* (Petition 8 (E010) of 2021) [2023] KESC 30 (KLR) (Constitutional and Human Rights) (21 April 2023) (Judgment) the Supreme Court stated as follows on due diligence:

“On the same issue, the Court of Appeal in *Samuel Kamere v Lands Registrar, Kajiado Civil Appeal No. 28 of 2005* [2015] eKLR stated as follows:“...in order to be considered a bona fide purchaser for value, they must prove; that they acquired a valid and legal title, secondly, they carried out the necessary due diligence to determine the lawful owner from whom they acquired a legitimate title and thirdly that they paid valuable consideration for the purchase of the suit property...” In view of the forgoing, the Petitioners cannot be deemed to be bona fide purchasers for value without notice.

38. Therefore, the sale of the portions affected by compulsory acquisition was null and void and the Petitioners’ reliance on the resulting titles is misplaced. Their remedy, if any, lies against the vendors who misrepresented the extent and legality of the interest they purported to convey. Taking all factors into account, I find that the Petitioners’ fundamental rights and freedoms under *the Constitution* of Kenya, 2010 have not been infringed, violated and/or threatened. The 1st Respondent has not, from their response and submissions before me, challenging the Petitioner’s titles entirely. Their claim is only to the extent that the Petitioners have encroached the road reserve which is unlawful.

39. In as much as the Petitioners have a right to own property, they are entitled to their properties only to the extent that such properties were acquired lawfully and have not encroached upon land that was acquired using public funds and set aside for a public use. Their right to property must be exercised within and in accordance with the framework of the law. Public lands acquired through compulsory acquisition are amongst the overriding interests on land which qualify the cancellation/rectification of title acquired under the Act. The Petitioners’ titles, to the extent that they comprise land which forms part of the road reserve, are defeasible to that extent.

40. In the final analysis, I find that this Petition is devoid of merit and the same is hereby dismissed with each party to bear their own costs.

41. It is so ordered.

DATED, SIGNED AND DELIVERED AT BUNGOMA THIS 3RD DAY OF JULY, 2025.

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HON.E.C CHERONO

ELC JUDGE

In the presence of;

Mr. Ragot for the 1st Respondent.

2nd, 3rd & 4th, Respondents/Advocate-absent.

Petitioner/Advocate-absent

Bett C/A.

