



Ombwayo & another v Obondi & 2 others (Environment and Land Appeal E019 of 2021) [2024] KEELC 6733 (KLR) (14 October 2024) (Judgment)

Neutral citation: [2024] KEELC 6733 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISUMU
ENVIRONMENT AND LAND APPEAL E019 OF 2021
SO OKONG'O, J
OCTOBER 14, 2024**

BETWEEN

HEZBON ODIERO OMBWAYO 1ST APPELLANT

BENTA ADHIAMBO OMBWAYO 2ND APPELLANT

AND

ANJELINA ANYANGO OBONDI 1ST RESPONDENT

COUNTY LAND REGISTRAR KISUMU COUNTY 2ND RESPONDENT

THE ATTORNEY GENERAL 3RD RESPONDENT

(Being an appeal from the judgment and decree of Hon. R.K. Ondieki, SPM, delivered on the 15th of March 2021 in Kisumu CMCELC No. 102 of 2018)

JUDGMENT

Brief Facts

1. At all material times, the 1st Respondent was the registered owner of all that parcel of land known as Kisumu/Kanyakwar “A”/ 582 (hereinafter referred to as “the suit property”) while the 1st and 2nd Appellants were the registered proprietors of all those parcels of land known as Kisumu/ Kanyakwar “Ä”/1472 and Kisumu/Kanyakwar “A”/1354 respectively (hereinafter referred to together as “the appellants’ land”). The 1st Respondent and the Appellants were neighbours. The suit property and the appellants’ land were adjacent to each other. The suit property and the appellants’ land were next to Kisumu Bypass-Kericho-Mau Summit Road with the suit property being at the front of the said road while the appellants’ land was behind the suit property with no direct access to the said road. During the construction of the said road, several parcels of land were compulsorily acquired by the Government. The suit property was among the parcels of land that were acquired by the Government for the construction of the said road. The suit property measured 0.10 Ha. and the Government acquired a



portion thereof measuring 0.091Ha. leaving the 1st Respondent with a portion of the original parcel measuring 0.009Ha. The 1st Respondent was paid a sum of Kshs. 3,406,484/- in 2012 for the said portion of the suit property as compensation. The 1st Respondent moved her residence from the suit property and relocated to another parcel of land within Kisumu County. The Appellants were not affected by the road construction and as such remained in occupation of their parcels of land which now had close proximity to the said road.

2. Although the said portion of the suit property had been acquired by the Government and compensation paid to the 1st Respondent, the Government took no steps to register its interest in the property against the title of the suit property. Since the suit property was unencumbered and the 1st Respondent remained as the registered owner of the whole of the property a portion of which was now occupied by a road and a road reserve, the 1st Respondent on 19th June 2014 unilaterally caused the suit property to be subdivided into two portions, Kisumu/Kanyakwar “A”/1841 and Kisumu/Kanyakwar “A”/1842 measuring 0.04 Ha. and 0.06Ha. The two subdivisions of the suit property were both registered in the name of the 1st Respondent who had received compensation in full for the portion of the suit property measuring 0.091Ha. Prior to undertaking the said subdivision exercise or immediately thereafter, the 1st Respondent moved back to the suit property, fenced the same, put up structures thereon and occupied the same through her agents or relatives.
3. The Appellants filed a suit against the 1st Respondent, the County Land Registrar and the Attorney General, the 2nd and 3rd Respondents herein before this court on 21st October 2015. The suit was transferred to the Chief Magistrate’s Court at Kisumu in 2018 and was assigned case number, Kisumu CMCELC No. 102 of 2018. The Appellants contended that after the 1st Respondent received compensation for the portion of the suit property that was acquired by the Government and vacated the same, the said portion of the suit property became a road reserve through which the Appellants had a right of way to and from the appellants’ land. The Appellants averred that the structures and the fence that the 1st Respondent had put up on the suit property upon moving back to the land had obstructed the Appellants’ access to the appellants’ land and had also posed various security risks to the Appellants since the occupants of the structures put up by the 1st Respondent on the suit property were unknown. The 1st Respondent averred that upon being acquired by the Government and compensation being paid to the 1st Respondent, the suit property became public land and was not available to the 1st Respondent to subdivide and register the portions thereof to her name. The Appellants averred that the 2nd Respondent had a responsibility to safeguard and protect public land. The Appellants averred that the registration of the subdivision of the suit property and the two portions thereof in the name of the 1st Respondent was carried out illegally and fraudulently by the 1st Respondent in collusion with the 2nd Respondent.
4. The Appellants averred that as a result of the said actions of the Respondents, the Appellants’ right to quiet and uninterrupted use of the Appellants’ land had been breached. The Appellants averred that they also brought the suit in the discharge of their responsibilities as citizens to protect public property in the public interest. The Appellants prayed for judgment against the Respondents jointly and severally for;
 1. A declaration that the actions of the 2nd Respondent in failing to cancel the registration of the 1st Respondent as proprietor of the suit property and substituting the 1st Respondent with the Government of the Republic of Kenya or the relevant public body or agency was an act of neglect of public duty.



2. A declaration that the action of the 2nd Respondent of permitting the sub-division of the suit property into two parcels, Kisumu/Kanyakwar 'A'/1841 and 1842 was fraudulent and in breach of the constitution of Kenya and the law.
 3. An order directing the 2nd Respondent to cancel the subdivision of the suit property into, Kisumu/Kanyakwar 'A'/1841 and 1842 and to register the acquired portion of the original parcel in the name of the Government of Kenya or the appropriate public body.
 4. A permanent injunction restraining the 1st Respondent whether by herself, her agents, servants or other person claiming through her from trespassing into, putting up any structures or remaining upon the acquired portion of the suit property or the two parcels into which the parcel had been subdivided namely; Kisumu/ Kanyakwar 'A'/ 1841 and 1842.
 5. A mandatory injunction compelling the 1st Respondent, her agents, servants or anyone claiming through her to vacate the portion of the suit property that had been acquired by the Government and to remove all structures on the property and in default, the 1st Respondent, her agents, servants or any persons claiming through her be forcibly evicted therefrom.
 6. Costs of the suit.
5. The 1st Respondent entered appearance and filed a statement of defence dated 25th November 2015 which was amended on 27th February 2019 to plead a counter-claim against the Appellants. The 1st Respondent admitted that the Appellants were the registered owners of the appellants' land which were situated along Kisumu Bypass-Kericho-Mau Summit Road. The 1st Respondent however denied that the Kisumu Bypass-Kericho-Mau Summit Road was accessible by the Appellants through the suit property. The 1st Respondent averred that the Government acquired a portion of the suit property measuring 0.091Ha. only leaving her with the remaining portion measuring 0.009Ha. The 1st Respondent averred that she had never vacated the said remaining portion of the suit property. The 1st Respondent averred that the fence complained of by the Appellants was put up by her on her remaining portion of the suit property and not on the public land that was acquired by the Government. The 1st Respondent denied that the said fence was interfering with the Appellants' access to the appellants' land.
6. The 1st Respondent contended that the Appellants had no cause of action against her since the land occupied by the 1st Respondent did not form part of the appellants' land. The 1st Respondent averred that the Appellants were not entitled to the use and enjoyment of the portion of land that was occupied by the 1st Respondent. In her counterclaim, the 1st Respondent reiterated the contents of her statement of defence. The 1st Respondent averred that the Appellants had been illegally and wrongfully trespassing on the 1st Respondent's remaining portion of the suit property and had continued to forcibly enter the said land. The 1st Respondent averred that by reason of the Appellants' said wrongful acts, the 1st Respondent was forced to erect a fence to prevent unlawful entry and exit from her said portion of land for her safety. The 1st Respondent averred that the Appellants had continued to harass the 1st Respondent demanding that the 1st Respondent removes her fence from her own property. The 1st Respondent prayed for the dismissal of the Appellants' suit and judgment in her favour against the Appellants for;
- a. A declaration that the 1st Respondent was the registered owner and was entitled to possession and occupation of the portion of the suit property measuring 0.009Ha.



- b. A permanent injunction restraining the Appellants whether by themselves or through their servants and/or agents from evicting or interfering with the 1st Respondent's quiet enjoyment and occupation of the said portion of the suit property.
 - c. An order permanently restraining the Appellants, their agents, servants or hirelings from trespassing on the 1st Respondent's portion of land.
 - d. Alternatively, an order that the Appellants compensate the 1st Respondent for the remaining portion of the suit property measuring 0.009Ha. should the court find that the Appellants were entitled to a right of way through the said portion of land.
 - e. Costs of the counter-claim.
7. The 2nd and 3rd Respondents entered appearance through the Attorney General and filed a statement of defence on 24th November 2015 in which they denied all the allegations in the plaint save where expressly admitted. The 2nd and 3rd Respondents admitted that the suit property had been subdivided. The 2nd and 3rd Defendants averred that no document relating to the compulsory acquisition of the suit property was forwarded to the 2nd Respondent for registration. The 2nd and 3rd Respondents denied that the 2nd Respondent acted fraudulently in registering the subdivision of the suit property and the two portions thereof. The 2nd and 3rd Respondents denied that the rights of the Appellants had been infringed. The 2nd and 3rd Respondents averred that the Appellants had no locus standi to file the suit and termed the suit misconceived and bad in law.
8. The lower court heard the Appellants' suit and the 1st Respondent's counter-claim and delivered a judgment on 15th March 2021. In the judgment, the lower court found that the Appellants had proved that the 1st Respondent had illegally and unlawfully repossessed the portion of the suit property which was compulsorily acquired by the Government. The lower court made a declaration to that effect. The court however found that there was no notice to the 2nd Respondent of the compulsory acquisition of the said portion of the suit property by the Government. The court found that the Appellants failed to prove that the 2nd Respondent acted illegally and fraudulently in registering the subdivision of the suit property and the portions thereof. The court therefore declined to grant prayers 2 and 3 in the Appellants' plaint. The lower court also found that the Appellants had no locus standi to seek an injunction to restrain the 1st Respondent from using the portion of the suit property that was acquired by the Government, and for an order of eviction of the 1st Respondent from the said portion of land. Prayers 4 and 5 in the plaint were therefore not granted. As concerns, the 1st Respondent's counter-claim, the lower court stated that having made a finding that the 1st Respondent had retaken possession of the portion of the suit property that was compulsorily acquired by the Government and compensation paid, the court could not determine which portion of the suit property belonged to the 1st Respondent and which one belonged to the Government for the purposes of the trespass claim. The court held that the 1st Respondent was not entitled to the reliefs sought in the counter-claim.

The appeal

9. The Appellants were aggrieved by the said decision of the lower court and preferred the present appeal. In their Memorandum of Appeal dated 9th April 2021, the Appellants challenged the lower court's judgment on the following grounds:
1. Having found that the 1st Respondent had unlawfully moved into the suit property after a portion of the said land was compulsorily acquired by the Government and the 1st Respondent fully compensated, the learned trial magistrate erred in law and in fact in finding that the



Appellants lacked locus standi to institute the suit, when it was pleaded by the Appellants and evidence on record showed that the 1st Respondent's unlawful action of moving back to the suit property, fencing off the same and putting up structures, after she had already been compensated, caused an obstruction and interfered with the Appellant's access to their own properties being land parcel No. Kisumu/Kanyakwar A'/ 1353 and land parcel No. Kisumu/Kanyakwar 'A'/1354 (the appellants' land), which automatically gave the Appellants the locus standi to sue the Respondents.

2. The learned magistrate erred in fact and law in finding that the Plaintiff in the lower court case should have been the National Land Commission or Kenya National Highways Authority because it was their property which was the centerpiece of the case and that it was them who would move to enforce the orders of the court if successful, yet the Appellants had pleaded and shown that the 1st Respondent, by her unlawful action of moving back to the suit property and putting up structures, was obstructing the Appellant's access to their properties and was infringing on the Appellants' right of way and access.
3. The learned magistrate erred in fact and law in failing to find that the Appellants had also brought the suit in the discharge of their responsibilities as Kenyan citizens to protect public property in the public interest.
4. The learned trial magistrate erred in failing to take into account the legal and constitutional principles relating to the ownership of title to land and that by dismissing the Appellants' case in its entirety, the court had effectively sanitised and countenanced an illegality.
5. Even though the court found that the 2nd Respondent was not made aware by the public body responsible for the acquisition of the suit property and the public body at whose instance the property was acquired had not taken the prescribed steps in finalising the process, the court should have nonetheless found that the action of subdividing the property and registering the resultant subdivisions in the name of the 1st Respondent was against the law and should have given an order for reversal.
6. The judgment of the trial court was against the weight of the evidence and was contradictory, especially given the finding that the 1st Respondent had been compensated fully and that her use and occupation of the subject property was unlawful.

The Appellants prayed that the appeal be allowed and the judgment and decree of the lower court be set aside and substituted with an order granting all the reliefs the Appellants sought in the lower court.

The submissions

10. On 25th October 2023, the court directed that the appeal be argued by way of written submissions and gave timelines within which the parties were to file their respective submissions. The 2nd and 3rd Respondents filed their submissions on 29th February 2024. The Appellants filed their submissions without leave of the court on 27th September 2024 nearly 1 year after the court gave directions on the filing of submissions. The 1st Respondent who was to file her submissions 14 days after service of the Appellants' submissions did not file the same. In their submissions, the Appellants gave highlights of the facts that gave rise to the dispute that was brought for determination by the lower court, the parties respective cases as presented before the lower court, the judgment of the lower court on the dispute and the Appellants' grounds of appeal to this court. The Appellants thereafter framed three issues for determination by this court namely; whether the appellants had the locus standi to institute



the lower court suit, whether the Respondents' subdivision of the suit property into two portions, Kisumu/Kanyakwar "A"/1841 and 1842 was fraudulent and/or illegal, and whether the prayers that the Appellants sought before the lower court for the cancellation of the said titles were merited. On the first issue, the Appellants contended that they had a right of way to the appellants' land through the suit property. The Appellants submitted that the 1st Respondent's action of coming back to the suit property and putting up structures thereon which interfered with the Appellants' access to the appellants' land through the said property violated their right of way and as such gave them the locus standi to institute the lower court suit. The Appellants submitted further that in addition to moving the court to protect their private rights, the Appellants also came to court as citizens of Kenya in the public interest to protect public property. The Appellants submitted that they had the locus standi to file the lower court suit and that the lower court having found that the 1st Respondent was registered as the owner of Kisumu/Kanyakwar "A"/1841 and 1842 illegally and fraudulently should have proceeded to cancel the said titles.

11. On the second issue, the Appellants submitted that the acquisition of the suit property having been published in the Kenya Gazette, the 2nd Respondent was deemed to have had notice that the 1st Respondent's proprietary interest in the suit property had been acquired compulsorily by the Government. The Appellants submitted further that the fact that the 1st Respondent held a title deed in respect of the suit property was not conclusive evidence that she was the owner of the property. The Appellants submitted that the 1st Respondent's interest in the suit property having been acquired by the Government and full compensation paid to the 1st Respondent, the purported subdivision of the property by the 1st Respondent was corrupt, fraudulent, and amounted to a criminal offence. The Appellants submitted that a court of law cannot countenance, encourage, and sanitise illegality. The Appellants submitted that their suit in the lower court was merited and should be allowed to succeed in terms of the reliefs sought in the appeal. The Appellants cited several authorities in support of their submissions which the court has considered.
12. In their submissions, the 2nd and 3rd Respondents submitted that the Appellants had not demonstrated how the lower court erred in its findings on the issues of fact or law. The 2nd and 3rd Respondents submitted the court should not disturb the trial court's findings. The 2nd and 3rd Respondents submitted that the lower court's finding that Appellants lacked the locus standi to bring the lower court suit as concerns some of the reliefs sought was correct. The 2nd and 3rd Respondents submitted that it was only the National Land Commission(NLC) or Kenya National Highways Authority (KENHA) which could tell the extent of the suit property that was compulsorily acquired by the Government. The 2nd and 3rd Respondents submitted that the reliefs sought in the lower court by the Appellants for the eviction of the 1st Respondent on account of the alleged encroachment and trespass were reliefs that accrued to the owner of the land that had been acquired compulsorily which was the Government and were rightly denied on account of lack of locus standi.
13. The 2nd and 3rd Respondents submitted further that the Appellants did not prove their case against the 2nd and 3rd Respondent on a balance of probabilities and the lower court's finding to that effect could not be faulted. The 2nd and 3rd Respondents submitted that the trial court rightly found that indeed the subdivision of the suit property was illegal but found further that the land registrar was not to blame for the reason that no notice was sent to the land registrar neither did the concerned parties approach the land registrar to register the interest they had acquired. The 2nd and 3rd Respondents submitted the Appellants did not produce any evidence showing that the subdivision of the suit property was undertaken fraudulently and in collusion with the 2nd Respondent. The 2nd and 3rd Respondents submitted that from the evidence tendered in the lower court, it came out that at the time the subdivision of the suit property was undertaken, the parcel file did not indicate that the



property had been acquired by the Government and no notice had been sent to the land registrar to that effect. The 2nd and 3rd Respondents submitted that Section 107(5) of the *Land Act*, 2012 provides in mandatory terms that a notice of intention to acquire land compulsorily must be served upon the land registrar and other interested parties. The 2nd and 3rd Respondents submitted that the Appellants were not entitled to the reliefs sought in the appeal.

14. On the last issue, the 2nd and 3rd Respondents submitted that the appeal was a waste of the court's time because the trial court did not err in law or fact. The 2nd and 3rd Respondents submitted that the suit property was owned by KENHA and neither KENHA nor NLC were parties to the suit. The 2nd and 3rd Respondents urged the court to dismiss the appeal with costs to the Respondents.

Analysis and determination

15. I have considered the pleadings and the proceedings of the lower court, the judgment of the court, the grounds of appeal put forward by the Appellants, and the submissions by the advocates for the parties. This being a first appeal, this court has to consider and re-evaluate the evidence on record and draw its conclusions on the issues that were raised for determination before the lower court. However, the court has to bear in mind that it did not have the advantage of seeing and hearing the witnesses who testified before the lower court. In *Kenya Ports Authority v. Kuston (Kenya) Limited* [2009] 2EA 212 the Court of Appeal held among others that:

“On a first appeal from the High Court, the Court of Appeal should reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in that respect. Secondly that the responsibility of the court is to rule on the evidence on record and not to introduce extraneous matters not dealt with by the parties in the evidence.”

See also, *Verani t/a Kisumu Beach Resort v. Phoenix of East Africa Assurance Co. Ltd* [2004] 2 KLR 269, *Selle v. Associated Motor Boat Co. Ltd.* [1968] EA 123 and *Abok James Odera t/a Odera & Associates v. John Patrick Machira t/a Machira & Co. Advocates* [2013]eKLR on the duty of the first appellate court.

16. The court will also not interfere with the findings of fact by the trial court unless they were not based on evidence at all or they were based on a misapprehension of the evidence, or where it is demonstrated that the court acted on wrong principles in reaching its conclusion. See, *Peter v. Sunday Post Ltd.* [1958] EA 424 and *Makube v. Nyamuro*[1983] KLR 403.
17. From the Appellants' grounds of appeal, the issues arising for determination in this appeal in summary are; whether the lower court erred in its finding and holding that the Appellants had no locus standi to seek an order of injunction restraining the 1st Respondent from entering and using the portion of the suit property which had been acquired compulsorily by the Government and the subdivisions thereof, namely, Kisumu/Kanyakwar “A”/1841 and 1842, and an order of eviction of the 1st Respondent from the said parcels of land, whether the Appellants had proved their claim against the 2nd Respondent and as such were entitled to prayers 1, 2 and 3 in their amended plaint, and whether the Appellants are entitled to the reliefs sought in their memorandum of appeal.



18. In *Law Society of Kenya v. Commissioner of Lands & Others*, Nakuru High Court Civil Case No.464 of 2000, the court stated as follows on locus standi:

“Locus Standi signifies a right to be heard, a person must have sufficiency of interest to sustain his standing to sue in Court of Law”. Further in the case of *Alfred Njau and Others v City Council of Nairobi* [1982] KAR 229, the Court also held that:-

“the term Locus Standi means a right to appear in Court and conversely to say that a person has no Locus Standi means that he has no right to appear or be heard in such and such proceedings”.

19. In *National Land Commission v. Afrison Export Import Ltd. & 10 Others* [2019] eKLR the court stated as follows on compulsory acquisition of land:

“4. Part VIII of the *Land Act* prescribes the process of compulsory acquisition of land required for public purposes. The Applicant is prompted either by the national or the county government when there is need to acquire land for a public purpose or in the public interest pursuant to Article 40(3) of the *constitution*, which sets out the threshold to be met for compulsory acquisition. The Applicant is required to conduct due diligence before acquiring the land after which it publishes a notice of intention to acquire the land in the Kenya Gazette. The notice is to be delivered to the Land Registrar and to every person who appears to have an interest in the land.

5. The Applicant is required to hold an inquiry to determine persons interested in the land in order to determine those that are entitled to compensation. Upon the conclusion of the inquiry, the Applicant is to prepare a written award of compensation for every person found to have a legitimate interest in the land. Thereafter, the applicant is required to make prompt payment of the compensation to the interested parties and if payment is not accepted, then it is to be made into a special compensation account held by the Applicant. Once payment is made, the Applicant takes possession of the land acquired and the land is from that point deemed to vest in the national or the county government as the case may be.”

20. It was common ground before the lower court and this court that the Government compulsorily acquired a portion of the suit property measuring 0.091Ha. for the construction of Kisumu Bypass-Kericho-Mau Summit Road and that the 1st Respondent was fully compensated for that portion of her land that was acquired by the Government. It was also common ground before the lower court and this court that the 1st Respondent remained with a portion of the suit property measuring 0.009Ha. If I understood the Appellants’ case in the lower court which I believe I did, the Appellants were aggrieved that although the 1st Respondent had been compensated for the portion of her land that was compulsorily acquired, the 1st Respondent was continuing to occupy and use the same, and had even purported to subdivide the same. The Appellants contended that after the said portion of the suit property was acquired, it became public land and as such was available for use by the Appellants as a road of access to the appellants’ land that was in the neighbourhood. The Appellants contended that by continuing to occupy and use the said portion of the suit property, the 1st Respondent was interfering with their right to use the land to access the appellants’ land, and also converting public land for her private use. I agree with the holding in *National Land Commission v. Afrison Export Import Ltd. &*



10 Others (supra), that once the Government has compulsorily acquired land for public use and has paid compensation to the land owner, the land vests in the Government. It follows therefore that the portion of the suit property measuring 0.091Ha. that was compulsorily acquired by the Government vested in the Government and became Government land. I agree with the finding by the lower court that the Appellants had no locus standi to file a civil suit to evict the 1st Respondent from Government land or to restrain her from using the land. I agree with the lower court that the National Land Commission which manages public land on behalf of the Government or KENHA on whose behalf the said portion of the suit property was acquired should have been the Plaintiffs in the suit. However public spirited the Appellants were, they had no locus standi to maintain a civil suit to evict trespassers from Government land. In any event, the evidence placed before the lower court leaves no doubt that the Appellants did not bring the lower court suit in the public interest. The suit was brought to protect private property interest. The Appellants had argued that in addition to bringing the suit to protect public interest, they also sought to protect their right of way that was being interfered with by the 1st Respondent. The Appellants placed no evidence before the lower court showing that they had a right to use the portion of the suit property measuring 0.091Ha. that was compulsorily acquired by the Government to access the appellants' land. The Appellants did not also place evidence showing that the portion of the suit property on which the 1st Respondent had placed structures and a fence was the portion of the suit property measuring 0.091Ha. which was compulsorily acquired by the Government and not the portion of the suit property measuring 0.009Ha. that remained after the said acquisition. Due to the foregoing, I find no reason to interfere with the lower court finding that the Appellants had no locus standi to seek an injunction to restrain the 1st Respondent from using public land and for her eviction from the land. The lower court rightly declined to grant prayers 4 and 5 in the amended plaint.

21. On whether the Appellants had proved their case against the 2nd Respondent and as such were entitled to prayers 1, 2 and 3 in their amended plaint, again, I am unable to fault the lower court. The Government was required to notify the 2nd Respondent of its intention to acquire the portion of the suit property measuring 0.091Ha. If the 2nd Respondent had received such notice, the 2nd Respondent would have made an entry in the register of the suit property concerning the same and would not have allowed the subdivision of the suit property without seeking approval from the National Land Commission or KENHA. I disagree with the Appellants that the Gazette Notice that was published by the Commissioner of Lands of the Government's intention to acquire the said portion of the suit property was sufficient notice to the 2nd Respondent of its acquisition. As mentioned in the authority I have cited earlier, the compulsory acquisition of land is a process, and until the process is completed by the payment of compensation, land cannot be deemed to have been compulsorily acquired. I agree with the lower court that allegations of neglect of public duty, fraud and breach of the *constitution* that were made against the 2nd Respondent were not proved. Due to the foregoing and the finding by the court on the issue of locus standi, the lower court rightly declined to grant prayers 1, 2 and 3 in the amended plaint.

Conclusion

22. In the final analysis and for the foregoing reasons, I find no merit in the Appellants' appeal. The appeal is dismissed with costs to the Respondents.

DELIVERED AND DATED AT KISUMU ON THIS 14TH DAY OF OCTOBER 2024

S. OKONG'O

JUDGE



Judgment delivered virtually through Microsoft Teams Video Conferencing Platform in the presence of:

Ms. Otieno h/b for Ms. Onyango Jael for the Appellant

N/A for the 1st Respondent

Ms. Jumaa for the 2nd and 3rd Respondents

Ms. J.Omondi-Court Assistant

