



**Simonash Investment Ltd v Kenya National Highway Authority & 2 others
(Constitutional Petition 15 of 2019) [2025] KEELC 3866 (KLR) (15 May 2025) (Ruling)**

Neutral citation: [2025] KEELC 3866 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISUMU
CONSTITUTIONAL PETITION 15 OF 2019**

E ASATI, J

MAY 15, 2025

**IN THE MATTER OF: ARTICLE 3(1), 19(3), 20(1), 23(1) & (3), 24,40,47,48,64,65
(3) (A), 66, 67(2),68(2)(C), 165 AND 258(1) OF THE CONSTITUTION**

**IN THE MATTER OF: ALLEGED VIOLATION AND THREATS TO ARTICLES
2(1) & (2), 10, 24,40,47,48, 258 (1) AND 259(1) OF THE CONSTITUTION**

IN THE MATTER OF: LAND ACT AND LAND ACQUISITION ACT.

**IN THE MATTER OF: VIOLATION OF RIGHTS TO ACQUIRE AND OWN
PROPERTY AND RIGHT TO PROTECTION OF THE RIGHT TO PROPERTY IN
FRAGRANT CONTRAVENTION OF ARTICLE 40 AND 47 OF THE CONSTITUTION.**

**IN THE MATTER OF : THE UNREASONABLE AND UNJUSTIFIABLE
LIMITATION OF THE HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS
OF A PERSON CONTRARY TO THE VALUES OF AN OPEN DISREGARD
OF THE SPIRIT, PURPORTED OBJECT OF THE BILL OF RIGHTS**

**IN THE MATTER OF: BREACH AND THREATENED CONTINUED BREACH OF THE
BILL OF RIGHTS UNDER ARTICLES 10, 24,29,40, 47 AND 50 OF THE CONSTITUTION.**

**IN THE MATTER OF: ILLEGAL AND UNCONSTITUTIONAL MARKING
OF THE PETITIONER'S PROPERTY FOR DEMOLITION AND CONTINUED
THREATENING OF THE PETITIONERS PROPERTY FOR DEMOLITIONS.**

**IN THE MATTER OF :THE CONSTITUTION OF KENYA (PROTECTION OF RIGHTS
AND FUNDAMENTAL FREEDOMS) PRACTICE AND PROCEDURE RULE, 2013.**

BETWEEN

SIMONASH INVESTMENT LTD PETITIONER

AND

KENYA NATIONAL HIGHWAY AUTHORITY 1ST RESPONDENT

NATIONAL LAND COMMISSION 2ND RESPONDENT



RULING

1. This is a matter that is finalized judgment having been delivered on 21/12/2022 in favour of the Petitioner which Judgment is the subject of an appeal to the Court of Appeal.
2. Vide the Notice of Motion application dated 23/4/2025 (herein referred to as the substantive application), the Petitioner approached the court under Certificate of Urgency seeking for orders substantively for citing the 1st Respondent for contempt of court. The petitioner also sought for an interim order of status quo maintaining the status quo of the suit land in effect barring the Judgment debtor from inter alia undertaking excavation, construction or development on the suit land pending hearing and determination of the application.
3. On basis of the averments in the Supporting Affidavit and the annexures thereto, the court certified the application urgent and directed that the application be served upon the Respondents for mention on 28/4/2025 for directions and/or orders.
4. There is no dispute that the Applicant and the other Respondents in the Petition were served for the mention of the matter on 28/4/2025. The applicant's contest is that the notice was too short for it (applicant) to act.
5. On the date of mention there was no representation for the Respondents. The court issued an order of status quo as prayed and gave directions on filing of response to the application and fixed the application for hearing before the trial court which as at the date was on leave.
6. Subsequently, the 1st Respondent in the petition filed the application dated 2nd May 2025 seeking for an order that pending the inter partes hearing and determination of the application and the Notice of Motion application dated 23rd April 2025 by the Petitioner there be an order of stay of execution and/or enforcement of the ex parte order of temporary injunction issued by the court on 28/4/2025.
7. The application was brought on the grounds shown on the face of the application and the Supporting Affidavit substantively that the 1st Respondent/applicant was given such short notice or no notice at all in relation to the mention that took place on 28/4/2025 when the interim order was granted.
8. The application was opposed vide the Replying Affidavit dated 8/5/2025.
9. I have considered the application, the Replying Affidavit and the oral submissions made by Counsel.
10. The substantive application filed by the Petitioners has not been heard. It is that application which will determine whether the Respondents are in breach of the Judgment of the court or not.
11. In the meantime, photographs annexed to the substantive application showed construction work going on which according to the petitioner was work being done by the Respondents at the same site that was the subject of the Petition and the Judgment. Prima facie there was need to stop the works pending hearing of the application. The interim order granted was for maintenance of status quo in respect of the suit land only by stopping any further excavation, construction or developments thereon. The order did not stop the construction of Kisumu-kakamega-Webuye- Kitale Highway.
12. Taking into account all the material placed before court, the court finds no reason to order stay of execution or enforcement of the order as prayed. The 1st Respondent's application dated 2nd May 2025 is therefore hereby dismissed. No order as to costs.



13. Parties to comply with the directions given on 28/4/2025.

Orders accordingly.

RULING, DATED AND SIGNED AT KISUMU AND READ VIRTUALLY THIS 15TH DAY OF MAY, 2025 THROUGH MICROSOFT TEAMS ONLINE APPLICATION.

E. ASATI,

JUDGE.

In the presence of:

Ajevi - Court Assistant.

N/A for the 1st Respondent/Applicant.

N/A for the Petitioners.

