



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT KITALE**

**LAND CASE NO. 46 OF 2019**

SAMUEL KISORO MOIBEN.....1<sup>ST</sup> PLAINTIFF  
SUSAN WAMBUI NDIRANGU.....2<sup>ND</sup> PLAINTIFF  
JAMES MURIITHI.....3<sup>RD</sup> PLAINTIFF  
SAMUEL WAINAINA GITONGA.....4<sup>TH</sup> PLAINTIFF  
JOSEPH MUIRURI.....5<sup>TH</sup> PLAINTIFF  
IBRAHIM MOHAMMED.....6<sup>TH</sup> PLAINTIFF  
GERALD NJONGE.....7<sup>TH</sup> PLAINTIFF  
ALLAN KARANJA WATHIGO.....8<sup>TH</sup> PLAINTIFF  
NANCY MBITO.....9<sup>TH</sup> PLAINTIFF  
CAROLYNE WANJIKU WAIYAKI.....10<sup>TH</sup> PLAINTIFF  
JOHN MACHARIA.....11<sup>TH</sup> PLAINTIFF  
COLLINS NMBANGO DENNIS.....12<sup>TH</sup> PLAINTIFF

**VERSUS**

NATIONAL LAND COMMISSION.....1<sup>ST</sup> DEFENDANT  
KENYA NATIONAL HIGHWAY AUTHORITY.....2<sup>ND</sup> DEFENDANT

**RULING**

1. The application dated 25/11/2019 which was filed in court 26/11/2019 has been brought by the plaintiffs. It seeks the following orders:-
  - (1) That this application be certified as urgent and service in the 1<sup>st</sup> instance be dispensed with and either prayer No. 2 or No. 4 be granted in the interim.
  - (2) That while pending the *inter-partes* hearing and determination of this application, this court be pleased to issue an order of temporary injunction restraining the respondents/defendants from compulsorily acquiring from Kenya Railways, the land registered as GOK Land (Kenya Railways) Block 4 measuring 3.0335 hectares for the construction of the Kitale - Endeless - Suam Road.
  - (3) That upon the interpartes hearing and determination of the application herein, this court do confirm the injunction by restraining the defendants from compulsorily acquiring from Kenya Railways, the land registered as GOK Land (Kenya

Railways) Block 4 measuring 3.0335 hectares for the construction of the Kitale - Endebess - Suam Road, while pending the hearing and determination of the suit.

(4) That in the alternative that an order be made that the *status quo* which prevailed on 13/6/2019, which the suit herein was filed and by which time the intended compulsory acquisition had not been perfected and possession taken, be preserved while pending the hearing and determination of the suit herein.

(5) That costs be provided for.

2. The applicant has brought the application under Sections 3 & 3A and 63(c) of the Civil Procedure Act, Order 40 Rules 1(a) and 4, Order 51 Rule 3 of the Civil Procedure Rules (2010) and Section 19 (3) (i) of the Environment & Land Court Act (2011).

3. The grounds upon which the application is made are that the plaintiffs are tenants of the Kenya Railways Corporation; the land they occupy fronts the Kitale - Suam road and they have developed it with permanent and semi-permanent structures as licensed by County Government of Trans Nzoia; that the 1<sup>st</sup> respondent issued gazette notices pursuant to land Act evincing the intention to compulsorily acquire the land known as **Kenya Railways Block 4** measuring **3.0335** for the expansion of the road; that however the actual land required for such construction only measures **0.253** hectares, was marked structures thereon demolished whereupon the applicants continued being in occupation of the remaining **2.7385** hectares which they maintain is not required for the construction of the road; that the compulsory acquisition of the entire Block is therefore mischievous and in bad faith and has been done contrary to the constitutionally provided manner and meant to deprive applicants of the land leased to them by the Kenya Railway; that the 1<sup>st</sup> defendant failed to serve the plaintiffs with notice of intended acquisition and also failed to establish that not all the occupied was required for road expansion and indicating incorrectly in gazette that the whole of Block 4 was required while only a portion was needed; that unless an injunction order is granted the compulsory acquisition may be finalised and the applicants' suit may be rendered nugatory damages that may not be adequately compensated by way of damages.

4. The application is supported by an affidavit of **Samuel Kosoro Moiben**, sworn on his own behalf and on behalf of his co-applicants dated **25/11/2019** amplifying the above grounds.

5. The respondents were served but they never filed appearance or defence. On **26/11/2019** this court granted prayer no. **(1)**, certified the application urgent in the first instance and also ordered the maintenance of *status quo* of the land; that the applicants have alleged to be not necessary for the road project pending the hearing of the application inter-partes. It also ordered that the application to be served within **7** days for interpartes hearing on **28/1/2020**. On **28/1/2020** there was no appearance for the defendants in court and no responses had been filed. This court upon perusing the affidavit of service of the process server dated **20/12/2019** and ascertaining that the 1<sup>st</sup> and 2<sup>nd</sup> defendants were served heard Mr. Kiarie for the applicants who prayed that the orders sought in the notice of motion be granted as prayed as it was unopposed.

6. As the application is unopposed I hereby grant the application dated **25/11/2019** in terms of prayer No. **(4)**.

7. The costs of the application will be in the cause.

**Dated, signed and delivered at Kitale on this 12<sup>th</sup> day of February, 2020.**

**MWANGI NJOROGE**

**JUDGE**

**12/2/2020**

Coram:

Before - Mwangi Njoroge, Judge

Court Assistant - Picoty

Ms. Kiarie for the applicant

N/A for the respondents

**COURT**

Ruling read in open court.

**MWANGI NJOROGE**

**JUDGE**

