



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KERICHO

ELC PETITION NO.1 OF 2019

IN THE MATTER OF ARTICLE 22(1), 23, 71(1) ARTICLE 40 OF THE CONSTITUTION OF KENYA 2010

AND

**IN THE MATTER OF ALLEGED VIOLATION OF ARTICLES 2, 10, 21, 28,
29, 31, 40, 42, 47(2), 60(1)(B) AND 69 OF THE CONSTITUTION OF KENYA**

AND

**IN THE MATTER OF OPENING AND WIDENING OF VILLAGE ROAD ADJACENT
TO PETITIONERS PARCEL OF LAND KERICHO/CHEMOIBEN/186 WITHOUT NOTICE
AND OR COMPENSATION BY THE COUNTY GOVERNMENT OF KERICHO**

ON 19TH DECEMBER TO 21ST DECEMBER 2018

AND

IN THE MATTER OF SECTION 4 OF THE FAIR ADMINISTRATIVE ACTION ACT

AND

IN THE MATTER OF SECTIONS 10 AND 11 OF PUBLIC ROAD ACCESS ACT

AND

IN THE MATTER OF SECTIONS 107, 108, 109, 111, 112, 113, 114, 115, AND 118 OF LAND ACT 2012

AND

**IN THE MATTER OF CONSTITUTION OF KENYA (PROTECTION OF RIGHTS AND
FUNDAMENTAL FREEDOMS AND ENFORCEMENT OF THE CONSTITUTION**

(PRACTICE AND PROCEDURE RULES) 2013

BETWEEN

JOEL KIPRONO MUTAL.....PETITIONER/APPLICANT

AND

JUDGEMENT

INTRODUCTION

1. This matter was filed here by **JOEL KIPRONO MUTAI**, the petitioner, against **THE COUNTY GOVERNMENT OF KERICHO** and **THE CHIEF OFFICER, ROADS, COUNTY GOVERNMENT OF KERICHO**, the respondents, on 15th January, 2019. The matter itself is a petition expressed to be anchored on Articles 2, 10, 21, 22(1), 23, 28, 29, 31,40,42, 47 (2), 60 (1) (b), 69, and 71 (1) of the Constitution of Kenya, 2010, Section 4 of the Fair Administrative Actions Act, 2015, Sections 10 and 11 of the Public Roads of Access Act, Sections 107, 108, 109, 111, 112, 113, 114, 115 and 118 of the Land Act, 2012 and the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) and Enforcement Practice and Procedure Rules, 2013. The dispute relates to, or revolves around, Land parcel NO KERICHO/CHEMOIBEN/186 (“disputed land” hereafter) owned by the petitioner.

PETITIONER’S CASE

2. The petitioner’s complaint is that between 19th and 21st December 2018, while he and his family were on holiday in Nairobi; the respondents trespassed on his land and sliced-off part of it when widening a road of access that abutted on it. While doing so, the respondents were said to have destroyed a fence, old trees, mature tea bushes, and a structure that housed a posho mill.

3. On the disputed land stands a school and the petitioner’s matrimonial home. The destruction of the old trees and the fence left the two exposed and insecure. It also affected the aesthetic quality of the surroundings. The whole exercise was said to have caused the petitioner psychological torture, demeaned his dignity, and violated his privacy. It was also an affront to his right to own property and an invasion of his entitlement to full enjoyment of the same.

4. The petitioner further felt, and even pleaded, that the respondent’s actions were a violation or infringement of his freedom against torture guaranteed under Article 29 (d) and (f), right to fair administrative action under Article 47, right to dignity under Article 28, right to privacy under Article 31, right to a clean and healthy environment under Articles 42 and 69 (1) g, and right to security of Land rights under Article 60 (1) (b), all of the Constitution of Kenya, 2010. He also saw it as a denigration of the values of governance spelt out at Article 10, - singled out by him as rule of law, human dignity, inclusiveness, good governance, transparency and accountability – and it was also an affront to Article 3 (1), which enjoins upholding, respecting, and defending the Constitution.

5. The actual or special damages caused consists of destruction of, 280 fencing posts, 10 rolls of barbed wire, loss of 38 mature trees and loss of 135 tea bushes. Related costs or damages to restore and/or bring a semblance of normalcy are put at Kshs.3,800,000 for the 38 trees, Kshs.35,952 for loss of 135 tea bushes, Kshs.1,341,846 for re-fencing, Kshs.100,000/= for 110 iron sheets, Kshs.868,200 for landscaping and restoration and costs of employing security personnel, being 3 for 3 months at Kshs.10,000/= per month. The total sum for all this was put at Kshs.6,415,998.

6. Ultimately, the petitioner made several prayers – including one for special damages as itemized above – as follows:

1. *A declaration that the respondents’ actions in the petitioner’s parcel of land KERICHO/CHEMOIBEN/186 are in contravention of Articles 2,3,10,28,29,31,40,42,47 (2), 60 (1) (b) and 69 of the Constitution of Kenya and are therefore illegal hence null and void.*

2. *A declaration that the petitioner should be compensated for:*

(a) *Loss of 38 trees aged 41 years at Kshs. 3,800,000*

(b) *Cost of landscaping and restoration of fence destroyed including flora and fauna at Kshs. 868,200/=.*

(c) *Loss of 135 tea bushes at Kshs. 35,952*

(d) *Costs of re-fencing at 1,341,846/=.*

(e) *Costs of 110 iron sheets at Kshs. 100,000*

(f) *Costs of engaging 3 security officers for 3 months at Kshs. 10,000/= per month. Total = Kshs.6,415,998, with interest from the date of filing the suit.*

3. *A declaration that the respondents do pay exemplary damages to the petitioner for violating the various provisions of the constitution with impunity.*

4. *A declaration that the respondent do pay general, damages to the petitioner for the illegal acts visited on him and his land.*

5. *A permanent injunction restraining the respondents by themselves, its servants or agents or otherwise howsoever from*

continued alienation, disturbing the original boundaries and trespass on the petitioner's land being land parcel NO KERICHO/CHEMOIBEN/186.

6. *Any other or further orders as this honourable court may deem fit.*

7. *The costs of these proceedings with interests.*

THE RESPONDENT'S CASE

7. The respondents responded vide a replying affidavit filed on 12th June, 2019. The response was a categorical, blow-by-blow, even chronological denial. In particular, it was deposed that there was no trespass, the road having been intended to be 9 metres wide by dint of a 1945 law. Nothing was done behind the petitioner's back. There was a meeting to which he was invited, which he declined to attend, and at which resolutions were made and communicated to him. He can't therefore be heard to talk of a denial of fair hearing.

8. It is the petitioner himself who had trespassed, the respondents deposed. There is therefore nothing like compensation and the issue of compulsory acquisition does not arise. There was also nothing like denial of peaceful enjoyment of property, there being no trespass or encroachment on to the petitioner's land. And the size of the petitioner's land was an approximation, not exact, and the petitioner was wrong to think or assume that it included the portion that was made part of the road.

9. Further, the respondents denied allegations of malice on their part. There was also nothing like threats from them to cause further damage to the property. There was nothing like oil-spillage from the earth-movers that did the road, the machines being operated by well-trained professionals. And the legitimate expectation the petitioner says was disregarded was misplaced as he was not entitled to have it over property that he didn't own. He couldn't also complain of not being heard. A notice was given to him, which he failed to heed. If he had legitimate expectation to be heard, the right to hearing was extended to him but he failed to seize it.

10. The petitioner was also faulted for thinking and alleging that there needed to be an environmental impact assessment. The exercise involved only expansion of a road and what he alleges was not required for that. Ultimately, the respondents averred that none of the petitioner's constitutional or other rights were violated.

THE PETITIONER'S SHORT RESPONSE

11. Probably not to be outdone, or possibly to even out scores, the petitioner filed a further supporting affidavit in which the averments made by the respondents' in their response were denied and in which the respondents were faulted for not bringing forth concrete evidence to back-up their denials. The petitioner emphasized that he has placed enough evidence before the court to prove trespass, destruction of his property, and violation of his constitutional rights.

SUBMISSIONS

12. The application was canvassed by way of written submissions. The petitioner's submissions were filed on 6th November, 2017. There is something curious about the submissions namely: They seem to focus both on the petition and an interlocutory application. The application is a motion on notice that was contemporaneously filed with the petition. The ruling on that application was delivered on 22nd May, 2019 and it is not clear why the petitioner is re-visiting it at the tail-end of the case. This however is not an issue to bother the court unduly.

13. The submissions capture the substance of the petitioner's case, reiterates his complaints, and then attempt to demonstrate alleged misdeeds against him in light of stated Constitutional and Statutory provisions as well as decided case law. In this regard, the right to property was said to have been violated. The petitioner submitted that he owns the suit property but the respondents came and "*proceeded to construct a 10 meter road causing untold destructions (sic) of Kshs. 6,415,998 and threatening to cause more destruction where they are targeting 18 trees and a school posho mill...*"

14. The petitioner submitted that acquisition of land needs to meet a certain threshold, more particularly as set out in Section 107 of the Land Act, 2012, and as captured in the dissenting opinion of Onguto J (as he then was) in the case of **PATRICK MUSIMBA VS THE NATIONAL LAND COMMISSION: PET. NO. 613 OF 2014, NAIROBI**. He reiterated that he needs to be compensated for forceful compulsory acquisition of his land. He emphasized that he was never afforded a hearing or treated fairly. And all this ran counter to his constitutional rights both under Articles 40 and 47 of the Constitution. His right to compensation and the other prayers sought is said to accrue both under Articles 22 and 23 of the Constitution.

15. Decided cases to shore up the petitioner's claim for compensation, particularly by way of general damages, include **SHIMONI RESORT VS REGISTRAR OF TITLES & 5 OTHERS: ELC NO. 961 OF 2012, NAIROBI, ISAAC GUHUNGU WANJOHI & ANOTHER VS ATTORNEY GENERAL & 6 OTHERS: PET NO. 154 OF 2011, NAIROBI, STANLEY MUNGA GITHUNGURI VS KENYA NATIONAL HIGHWAYS AUTHORITY & 2 OTHERS: (2014)eKLR and MILKI LIMITED VS COUNTY GOVERNMENT OF LAMU & 2 OTHERS: (2018)eKLR**. In all these cases, the courts awarded various amounts of money as general damages upon finding that the parties rights under Articles 40 and 47 of the Constitution had been violated.

16. The environmental angle to the complaint was said to consist in the respondent disregard of the petitioner's right under Article 42 of the Constitution which vests in him an entitlement to a clean and healthy environment. According to the petitioner, the respondents should have adhered to the requirements of Section 8 of the Environmental Management and Coordination Act by conducting an Environmental Impact Assessment. The case of **MOFFAT KAMAU & 9 OTHERS VS AELOUS KENYA LTD: PET. NO. 13 OF 2015, NAKURU** was cited to shed light on the way forward.

17. The petitioner also felt that he is entitled to exemplary damages as the respondents action of hiving-off his land was blatant and done with impunity, in the end causing destruction and loss.

18. The respondents submissions were filed on 10th December, 2019. They reiterated that the petitioner's property rights were not violated as alleged or at all, the size of his land being an approximation, and part of it, which was excised, being held by him in trust for the public. And this is so, it was submitted, because some 1945 physical planning measurements put the width of the road at 9 metres, meaning that there was encroachment of 1.5 metres by owners of the parcels of land abutting the road on both sides, the petitioner included. According to the respondents, the action of widening the road was necessary in order to put right what had gone wrong. And the wrong included the petitioner's alleged encroachment onto the road. The cases of **SAMUEL WANGAU VS AG & 2 OTHERS (2009)eKLR and ABDALA MOHAMMED SALEM & ANOTHER VS OMAR MAHMUD SHALLO & ANOTHER (2014)eKLR** were cited to drive home the point that the boundaries are an approximation, and therefore inexact.

19. Further, the respondents submitted that while Article 40 of the Constitution protects property rights, that protection does not extend to property that has been unlawfully acquired. The petitioner was said to have trespassed into a road reserve. He should not therefore be heard to say that his rights were violated.

20. The issue of compulsory acquisition was also said to be misplaced. According to the respondents, *"there was no need for the process of compulsory acquisition in this matter on the basis that the government cannot compulsorily acquire its own land..."*

21. It was the respondents' submissions too that the petitioner cannot justifiably claim to have been kept in the dark regarding the issue of road expansion. A meeting of the area land owners was said to have been called and the petitioner was actually invited. He however failed to honour the invitation and did not therefore attend. Ultimately, the respondents averred that the petitioners did not suffer loss or damage and his rights were not violated as it was in fact him who had encroached into the road. The court was asked to dismiss the petition with costs.

ANALYSIS

22. I have considered the petition as filed, the responses made, and the rival submissions. The cause of action in this matter arose in a somewhat simple manner. It involved expansion, or widening if you will, of a village road into a part of land that the petitioner had always known to be his own. That is said to have been done without the petitioner being informed and/or without his permission. The expansion involved removal or destruction of trees, some tea bushes, barbed wire and a posho-mill house. Into this act, the petitioner read several types of violations of his constitutional and statutory rights as indicated on the face of his petition and later explicated in his submissions. The respondents on the other hand aver that there were no such violations.

23. It is common ground that the road was expanded or widened. To the petitioner, that happened on his own land. To the respondents, it all happened on a road reserve created way back in 1945 under some law or survey plan. But the respondent did not avail the law or the plan to the court. They only alleged and left it at that. They also did not dispute well the measurements shown on the Registry Index Map availed by the Petitioner. These measurements show the width of the road as six (6) metres. The respondents only response is that the measurements are not exact. They are mere approximations.

24. There are several weaknesses or shortcomings in the various positions taken by the respondent. First, the justification for what they did is based on an alleged 1945 law or plan. Here, the question to ask is: What is to guide us? Current laws, plans, or records or 1945 laws, plans or records? It seems to me obvious that the respondents are laboring under a serious misdirection to think that anybody in this day and age can be said to be guided by long dead, archaic or archival material, properly belonging in history, to govern a current situation. Worse still, it would be completely wrong for a court of law to accept such guidance. Second, even the alleged material was not shown to court. It was not shown to exist. Yet the respondents expect that the court will believe their story. In a court of law, you allege and prove. Bare or mere allegations are not useful.

25. Justification for the respondents' action was also predicated on the alleged fact that the size of the petitioner's land is not exact. It was said to be an approximation. True, most of the land in this county has sizes based on such approximation. Yet it is also true to say that based on such approximation, boundaries have been fixed or set to represent the sizes of land and courts of law have always upheld proven issues of trespass or encroachment arising from violation of such boundaries.

26. It would for instance be plainly wrong for anyone to cross over into somebody's land without permission or justification and, when confronted, turn around to say that the boundary so crossed is not exact or is a mere approximation. The more correct position in law is to presume or construe any such approximation in favour of the titled land owner. If a contrary position were to hold sway, trespassers would have a jolly good time making illegal entries into a person's land and engaging in all manner of unlawful activities. That would make a mockery of property rights of private land owners.

27. In the matter at hand, the respondents said they had notified the petitioner of what they intended to do. Yet such notice was not shown to court. What was shown instead are alleged minutes of a meeting held in the area to deliberate on the issue. The petitioner was said to have been invited to that meeting. No such invitation however was shown or proved. Some elders were further said to have relayed information about the meeting to the petitioner. No such elder was made available to shed light on the issue. At least one would expect that even if the elders, don't come, some affidavit evidence from then would be made available. There was no such evidence.

28. An objective assessment or consideration of what the respondents did show clearly that they wronged the petitioner. The current records of the size of the road they were widening show that the road is supposed to be six (6) metres wide. These are the records that the respondents were supposed to use. They are the records that are based on the current applicable law. It really does not matter that all the other villagers had consented to the widening of the road. The petitioner's objections as a private land owner needed to be respected. And if, for any reason, the respondents felt that they needed to expand the road into his land, due process required to be followed.

29. The 1st respondent – **COUNTY GOVERNMENT OF KERICHO** – is a mighty entity. The 2nd respondent, who is obviously its agent, is also mighty. The petitioner – **JOEL KIPRONO MUTAI** – may look like a small fry to them. What the respondents did during the material period was to ride roughshod over the petitioner’s guaranteed rights. If the law does not come to the aid of the petitioner, then he has nowhere to go. He would be left helpless and hopeless. He can be ruined completely.

30. It is my finding that some constitutional rights of the petitioner were violated without any justifiable cause. No portion of his land was supposed to be sliced-off or interfered with without his consent or without following the current applicable law. It was wrong, even unlawful, for the respondents to purport to hide behind outdated historical records to interfere with his land.

31. A look at the petition shows the petitioner alleging violation of the following constitutional rights: right to property under Article 40, right to freedom against torture under Article 29, right to fair administrative action under Article 47, right to dignity under Article 28, right to privacy under Article 31, and environmental rights under Articles 42 and 69. The respondents were also accused of breaching the values of governance enshrined in Article 10 and failing to uphold and defend the constitution as enjoined in Article 3.

32. On the face of the petition, there is indication of violation of various provisions of statutory law, among them being Section 4 of The Fair Administrative Action Act, Section 10 and 11 of Public Road of Access Act, and Sections 107,108,109,111,112,113,114,115 and 118 of the Land Act, 2012. Somewhere in the petition, there was also mention of non-compliance with Section 8 of the Environmental Management and Co-ordination Act, 2015.

33. In the submissions however, there was more emphasis on violation of the petitioner’s rights under Articles 40 and 47 of the Constitution. In fact it is these two Articles that form the basis of the petitioner’s concluding remarks in the submissions. There is also not much mention of statutory law violation in the submissions. And the bulk of the case law cited concerned redress of violations of Articles 40 and 47 of the Constitution.

A SHORT COMMENTARY

34. As a commentary, I think it is necessary to point out that petitions brought for redress of violations of constitutional provisions should have a predominant constitutional character. When they are mixed up with alleged violations of provisions of various statutes, as is the case here, there is real danger or risk that they are denuded of their distinct constitutional purity and they may become less suitable for effective adjudication.

35. And the nexus between the act or actions complained of and the provisions of the Constitution said to be violated should be rather obvious and/or direct. Proof of such violations should not be difficult. It is often the case that where proof is arrived at through convoluted, laborious, and hazy reasoning, or through extrapolations that extend beyond the boundaries of reasonableness, then it is not real proof; it is something else. Our constitution was made with the ordinary person- commonly called Wanjiku in Kenyan parlance – in mind. You loose that person if you engage in the kind of reasoning I have mentioned.

36. In this matter itself, the petitioner started with so many allegations of violations of both constitutional and statutory law provisions only for him to abandon almost all of them in the submissions and focus on only a few. And the submissions themselves seem unviable and/or unwieldy, for they have a divided focus, first, on the petition itself and, second, on an already concluded application that had been brought by way of motion on notice. It is beyond my ken why the petitioner is seeking to re-urgitate a concluded application. It also beats logic why he cannot focus on the petition only.

37. It is also important to be honest and/or forthright. I say this because I have noticed some misrepresentations of law in the petitioner’s submissions. Let me go straight to the point. In a bid to demonstrate that his environmental rights have been violated, the petitioner cited what he calls “*Section 8 of Environmental Management and Coordination Act, 2015*” He cites it to show that environmental impact assessment was not done before expanding the road.

38. There is nothing like Environmental Management and Co-ordination Act, 2015. What there is is Environmental Management and Coordination (Amendment) Act, 2015. While it is easy to overlook the omission to include the word “amendment” in the citation of that law or excuse it as a typo or innocent mistake, what follows is yet another puzzle or blunder. Section 8 of that law is cited as the one enjoining the undertaking of Environmental Impact Assessment. But that is not the correct position. Section 8 talks about the location of the National Environmental Management Authority (NEMA), clearly stating it to be Nairobi and adding, as an amendment to the original Act, that NEMA has to ensure that its services are available throughout the country. But while this may still sound minor, there is more.

39. And the more is this: To drive home his point under the purported substance of Section 8, the petitioner quotes my brother, Sila J, in the case of **MOFFAT KAMAU & 9 OTHERS VS AELOUS KENYA LTD: ELC PETITIONER NO. 13 OF 2015, NAKURU (2016) eKLR** in the following terms:

“It has been my view, which I still hold, that where the procedures for the protection of the environment are not followed, then an assumption may be drawn that the right to a clean and healthy environment is under threat. Section 8 of the Environmental Management and Coordination Act, 2015 observes that notwithstanding any approval, licence, permit granted under any law in Kenya before financing, commencing, proceeding with, carrying out, executing or conducting a specified project, the project proponent must apply for and obtain an Environmental Impact Assessment licence”.

40. Right? Wrong. The quotation starts correctly but is later tweaked or twisted somewhere in the middle to read something completely different. The petitioner was quoting paragraph 90 of the learned judge’s judgement but he ended up including things that the learned judge never mentioned in the paragraph.

41. For the avoidance of doubt, I will set out the relevant part of the substance of the paragraph. It is as follows:

*“It has been my view, which I still hold that where procedures for the protection of environment are not followed, then an assumption may be drawn that the right to a clean and healthy environment is under threat. I cannot put it any better than I did in the case of **KEN KASINGA VS DANIEL KIPLANGAT KIRUI and 5 OTHERS** (supra) where I stated as follows at paragraph 73 of the judgement.”*

The judge thereunder then expressed *ipsisima verba* the substance of paragraph 73 of his judgement in Kasinga’s case.

42. It can be seen in the quotation I have rendered that the judge did not make mention of the non-existent contents of Section 8. He did not also mention some other things attributed to him in the petitioner’s quotation. Curiously, the authority was made available to this court but the petitioner nevertheless proceeded to misrepresent things in his submissions. I think the point is now clear. The petitioner is being less than honest in his submissions regarding both case law and statutory law.

43. The petitioner also seems to be mixed up regarding the statute law applicable to compulsory acquisition of land. On the face of the petition the petitioner correctly invokes Sections 107, 108, 109, 111, 112, 113, 114, 115 and 118 of the Land Act, 2012. That is where the statutory law on compulsory acquisition of land is spelt out. But see how he submits on the same issue later on:

“Where the government acquires land by way of compulsory acquisition full compensation must be undertaken. Section 8 of the Land Acquisition Act observes that

“Where land is acquired compulsorily under this part, full compensation shall be paid promptly to all persons interested in the land”

Here, it can be seen clearly that the petitioner is making reference to Land Acquisition Act (cap 295), which is a repealed law. Why he gets mixed-up is not clear. What is clear is that this further adds to the confusion in his submissions.

44. And the confusion continues: The concluding part of the submissions is as follows:

“Your Lordship, is therefore urged to allow the application dated 15th January, 2019 in its entirety as prayed for with costs”.

Yes, the court is being asked to allow the application dated 15th January, 2019, not the petition. And the application is one that is already concluded. The point I am making is this: The Petitioner’s submissions are a good example of how NOT TO SUBMIT. One easily notices lack of clarity of focus. There is no clearness of purpose. There is mis-representation of law. In simple terms, the submissions are a jumbled response to otherwise clear issues. They are a hotchpotch of truths, half-truths and outright falsehoods.

45. I don’t notice this kind of confusing scenario in the respondents’ submissions. Although I may not agree with their position, their submissions are rendered with clarity. There is a logical flow of reasoning and one cannot mistake the position taken. The fatal weakness in the respondents’ case consists in their inability to prove or demonstrate the facts that they put forward. Most of their allegations required documentary back-up. They failed on this score. The foundational aspects of their case are therefore wanting.

DECISION

46. So much for the commentary. I can now embark on the decision. I have already found for the petitioner concerning the unlawful excision of a strip of his land to widen a village road. In the petition itself as filed, the petitioner would have us believe that so many of his constitutional and statutory law rights were violated. In the submissions however, he has not been able to demonstrate that. He focused more on violations of Article 40 and 47 of the Constitution. In my view, these are the provisions that have a direct and obvious connection to the actions complained of. The other allegations of violations were probably meant to embellish the petition. And I say this because there was no serious effort made to demonstrate or prove them. Article 40 is about protection of property rights while Article 47 is about fair administrative action. Like all other fundamental rights, there are remedies associated with breach of these two.

47. The petitioner prayed for various remedies, seven in all. I have already set them out in the judgment. I have no problem granting prayer 1. But I grant it in a modified form. The prayer talks of contravention of Articles 2,3,10,28,29,31, 40, 42, 47 (2), 60 (1) (b) and 69 of the Constitution. My finding is that the violation only related to article 40 and 47 of the Constitution and the prayer is only successful and granted to that extent.

48. Prayer 2 is about compensation. According to the petitioner, there was loss of 38 trees aged 41 years, all valued at Kshs.3,800,000. I don’t see any report on record showing the assessment of the value of the trees. Simple calculation would show that the petitioner has given each tree a value of 100,000/=. This is a value plucked from the air. It is also an exorbitant value. I really don’t know of a human-planted tree that can fetch a value of Kshs.100,000. That amount of money is not small change. Even for very old natural trees, only few would fetch such an amount. Methinks they would have to be very big, probably belonging in primeval times, and extremely valuable in terms of the quality of things that can be made from them. I award nothing under this sub-head of prayer 2. The suggested award is conjectural and exaggerated.

49. Under the same prayer (prayer 2) a claim is made for cost of landscaping. The amount claimed is Kshs. 868,200/=. For this, there is an expert report from a firm called AFRISCAPE. The report shows how the figure was arrived at. I grant the sum. There is also claim for loss of tea bushes. For this, the sum claimed is Kshs. 35,952/=. There is a report about destroyed tea bushes on record. It is dated 28th December, 2018. I award this sum too. Another sum claimed under prayer 2 is that of re-fencing. The amount claimed is Kshs.1,341,846/=. It is also from AFRISCAPE. In my view, this should also be awarded and I award it. The report seems comprehensive to me. There is a claim too of Kshs.100,000/= for iron sheets. I don’t see anything on record to justify this claim. I therefore decline to award

it. Finally, under the same prayer (prayer 2) there is claim of cost of engaging 3 security officers for 3 months at Kshs.10,000/= per month. Nothing was shown to justify this claim. Records should have been availed to prove it. They were not. Nothing is therefore granted under this head.

50. Prayer 3 is about payment of exemplary damages. The petitioner did not prove all violations he pleaded in his petition. I think I would have been persuaded to grant something under this prayer had the petitioner for instance proved torture or loss of dignity. But he didn't. I award nothing under this prayer. The next prayer, which is prayer 4, is for general damages. Yes, it is true that the respondent had no right to violate the petitioner's rights to property. They also didn't treat him fairly. He clearly states that he was not even opposed to the expansion of the village road but he had concerns that need to be looked into and addressed. Apparently the respondents were not ready for this. They descended on his land with earthmovers and caused destruction. The petitioner is entitled to general damages and I grant him Kshs. 200,000/= under this head.

51. Prayer 5 is about injunction. The petitioner wants a permanent injunction. I grant this prayer. It is merited. But should the respondent want to continue with the road works, then due process should be followed and this order can be varied or set aside. Prayer 6 is about any other relief the court may wish to grant. The court is satisfied with what is already prayed for. No award therefore is made under prayer 6. The last prayer, which is No. 7, is about costs and interest. I grant this prayer. The petitioner would not have come to court if the respondents had followed the law.

52. It is reasonably clear that where the petitioner made expert reports available for the claims in prayer 2, I have awarded what was claimed. I have done so because the reports were not controverted. There was no rebuttal from the respondents.

Dated, signed and delivered at Kericho this 20th day of May, 2020.

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A. K. KANIARU

JUDGE