



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS

ELC. CASE NO. 91 OF 2019

KIRAN KUMAR CHANDUBHAI.....1ST PLAINTIFF

DUSHYANT NARSHIBHAI PATEL.....2ND PLAINTIFF

VERSUS

NATIONAL LAND COMMISSION1ST DEFENDANT

KENYA NATIONAL HIGHWAYS AUTHORITY.....2ND DEFENDANT

KENYA POWER AND LIGHTING COMPANY3RD DEFENDANT

HON. ATTORNEY GENERAL4TH DEFENDANT

RULING

1. In the Notice of Motion dated 30th July, 2019, the Plaintiff has prayed for the following orders:

a. That pending the hearing and determination of this suit a temporary order of injunction be issued restraining the Defendants whether by themselves, their servants, contractors, employees and/or agents from encroaching on or gaining access to Land Reference No. 10426/244 and further from interfering in any manner whatsoever with the Plaintiff's quiet and peaceful possession and enjoyment of the said property including carrying out of any road works of whatever nature and any works for the erection of power lines within the property.

b. Costs be provided for.

2. The Application is supported by the Affidavit of the 2nd Plaintiff who has deponed that the Plaintiffs are the registered proprietors of Land Reference No. 10426/244 measuring approximately 1.960 hectares and situate in Mavoko and that the 2nd Defendant has without the consent of the Plaintiffs appointed private contractors who have placed beacons on the suit property earmarking a substantial section of it for the expansion of the Athi River-Mombasa Highway.

3. According to the 2nd Plaintiff, the section of the suit property earmarked for the said expansion is 0.1246 Ha; that the 3rd Defendant has earmarked sections of the same land for the erection of power line infrastructure without the consent of the Plaintiffs and that the purported actions of the 2nd and 3rd Defendants are unlawful and amounts to encroachment and trespass.

4. In response, the 1st Defendant's Acting Director, Land Valuation and Taxation, deponed that the 1st Defendant, pursuant to its mandate under Part VIII of the Land Act, was in the process of acquiring various parcels of land on behalf of the 2nd Defendant for the construction of the second carriageway of Athi River -Machakos Turnoff Road Project.

5. According to the 1st Respondent's Director, Land Reference No. 10426/244 was among the parcels of land that were to be compulsorily acquired via Gazette Notice No. 9536 of 29th September, 2017 and that the 2nd Defendant has since written to the 1st Defendant stating that it has revised the road design with minimal land acquisition.

6. According to the 1st Defendant's Valuer, the 2nd Defendant has also reviewed its land acquisition requirements and forwarded to the 1st Defendant a revised schedule and acquisition plan for the project; that L.R. No. 10426/244 is among the parcels of land that the 2nd Defendant has amended in its schedule and that the 2nd Defendant has instructed the 1st Defendant to publish a corrigenda that will reflect the amendment.

7. The Plaintiffs' advocate submitted that if the suit property is compulsorily acquired, then the Plaintiffs are entitled to compensation; that the 1st and 2nd Defendants trespassed on the suit property and that the actions of the Respondents are unconstitutional. The Respondents' advocate did not file submissions.

8. It is not in dispute that the Plaintiffs are the registered owners of the suit property. According to the Plaintiffs, the Defendants have earmarked a portion of the suit property for the expansion of the road network, and that no acquisition notice has been served on them.

9. The 1st Defendant has acknowledged that initially, it had instructions from the 2nd Defendant to compulsorily acquire the suit land. However, due to the change of the road design, the acquisition of the Plaintiffs' land has been shelved.

10. The Plaintiffs have exhibited the survey Report showing the extent of the suit property that was to be acquired by the Defendants. If that is so, the Plaintiffs' only recourse is to sue for compensation.

11. I say so because under Article 40 of the Constitution, the Defendants, while exercising the power of Eminent Domain, can acquire private land for public use. The Constitution requires that upon such acquisition, the Plaintiffs will be entitled to prompt compensation.

12. Considering that the acquisition for private land by the Defendants is allowed by the law, the said process cannot be stopped by this court. The Plaintiffs' claim is only limited to compensation, which they should pursue in the main suit.

13. For those reasons, I disallow the Application dated 30th July, 2019 but with no order as to costs.

DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 15TH DAY OF MAY, 2020.

O.A. ANGOTE

JUDGE