



**Wilder Group Limited v Kenya National Highway Authority; Ministry of Lands, Public Works, Housing and Urban Development & 2 others (Interested Parties) (Environment and Land Petition E005 of 2022) [2025] KEELC 6434 (KLR) (25 September 2025) (Judgment)**

Neutral citation: [2025] KEELC 6434 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KISUMU  
ENVIRONMENT AND LAND PETITION E005 OF 2022**

**E ASATI, J**

**SEPTEMBER 25, 2025**

**IN THE MATTER OF: ARTICLES 1, 2, 3, 10, 20, 21, 22, 23, 162  
(2B), 165 (5B) AND 258 OF THE CONSTITUTION OF KENYA, 2010**

**AND**

**IN THE MATTER OF: ALLEGED CONTRAVENTION OF  
FUNDAMENTAL RIGHTS SECURED AND GUARANTEED UNDER  
ARTICLES 40 AND 47 OF THE CONSTITUTION OF KENYA, 2010.**

**AND**

**IN THE MATTER OF: A SECTIONS 107, 107A, 110, 111, 112, 113, 114, 115,  
116, 117, 119, 120, 121, 125, 128 AND 131 OF THE LAND ACT NO. 6 OF 2012**

**AND**

**IN THE MATTER OF: RULES 4, 10 AND 11 OF THE CONSTITUTION  
OF KENYA (PROTECTION OF RIGHTS AND FUNDAMENTAL  
FREEDOMS) PRACTICE AND PROCEDURE RULES, 2013.**

**AND**

**IN THE MATTER OF: COMPULSORY ACQUISITION OF A PORTION OF 0.01  
HECTARES EXCISED FROM THE PARCEL OF LAND KNOWN AS KISUMU/  
KANYAKWAR 'A'/73 MEASURING APPROXIMATELY 0.088 HECTARES**

**BETWEEN**

**THE WILDER GROUP LIMITED ..... PETITIONER**

**AND**

**KENYA NATIONAL HIGHWAY AUTHORITY ..... RESPONDENT**

**AND**



**MINISTRY OF LANDS, PUBLIC WORKS, HOUSING AND URBAN DEVELOPMENT ..... INTERESTED PARTY**  
**MINISTRY OF ROADS & TRANSPORT ..... INTERESTED PARTY**  
**THE HON ATTORNEY GENERAL ..... INTERESTED PARTY**

## **JUDGMENT**

### **Introduction**

1. This matter was commenced vide the Petition dated 13<sup>th</sup> October, 2022 vide which the Petitioner who claims to be the registered owner of land parcel number Kisumu/Kanyakwar “A”/73 complained that the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents encroached onto the suit land in excess of 0.01Ha thereby making the remaining portion of the suit land no longer tenable for use for commercial or rental purposes. The Petitioner claimed that the action of the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents was unconstitutional, unreasonable, un-procedural, illegal and offensive to the sacrosanct right to property.
2. The Petitioner therefore sought for the intervention of the court. Vide the court’s ruling dated 5<sup>th</sup> October, 2023 the 1<sup>st</sup> and 3<sup>rd</sup> Respondents were struck out of the proceedings.
3. The petition therefore proceeded to hearing against the 2<sup>nd</sup> Respondent only.
4. The petition was later amended and replaced with the amended petition dated 23<sup>rd</sup> January, 2025 pursuant to leave granted on 19<sup>th</sup> November, 2024.
5. The amended petition brought more parties on board namely; Ministry of Lands, Public Works, Housing and Urban Development, Ministry of Roads and Transport and the Hon. Attorney General as the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Interested Parties.
6. The amended petition sought for the following relief;
  - a. a declaration be issued that the Petitioner’s right not to be deprived of his property arbitrarily by the state without prompt payment in full of just compensation guaranteed under article 40 of *the Constitution* of Kenya 2010 has been contravened by the Respondents.
  - b. a declaration be issued that the Petitioner’s right to fair administrative action guaranteed under article 47 of *the Constitution* of Kenya 2010 has been contravened by the Respondents.
  - c. an order of mandamus be issued to compel the Respondents to gazette in the Kenya Gazette the compulsory acquisition of a portion of 0.01 Ha in Kisumu/Kanyakwar “A”/73 for purposes of the ongoing construction of the Kisumu – Kakamega Highway.
  - d. an order of mandamus be issued to compel the 2<sup>nd</sup> Respondent to pay to the Petitioner promptly, the full and just compensation for the acquired portion of 0.01 Ha in Kisumu/ Kanyakwar “A”/73 at the current market value.
  - e. general and exemplary damages.
  - f. interests on (e) above at court rates from the date of filing the petition until payment in full; and
  - g. costs of the petition.



7. In reply to the petition, the 2<sup>nd</sup> Respondent filed response to petition dated 17<sup>th</sup> November, 2023 denying the Petitioner's claim.
8. The response was later amended and replaced by the response dated 4<sup>th</sup> March, 2025.
9. The Interested Parties filed no response to the petition.
10. Vide directions given by the court on 25<sup>th</sup> February, 2025, the petition was disposed of by way of Affidavit evidence and written submissions.

### **Summary of the evidence**

11. The Petitioner relied on the contents of the Supporting Affidavits sworn by Azim Jiwa Rajwani on 13<sup>th</sup> October, 2022 and 27<sup>th</sup> January, 2025. Where he stated that the Petitioner was the legal registered owner of land parcel number Kisumu/Kanyakwar "A"/73 measuring 0.088 Ha in respect of which the Petitioner holds a title deed issued on 16<sup>th</sup> February, 2022.
12. That the Respondent in the ongoing construction and expansion of the Kisumu – Kakamega Highway compulsorily acquired a portion of 0.01 Ha in the Petitioner's property without compensating the Petitioner.
13. That upon discovery of the encroachment by the Respondents, the Petitioner undertook a survey of the property and that the report confirmed the encroachment in excess of 0.01 Ha.
14. That given the encroachment, the remaining piece of land is no longer tenable and cannot be utilized for commercial or residential purposes. That the Petitioner had intended to put up a petrol station at the property and in the alternative, was to build a commercial complex for mixed use both purposes now being untenable consequent to the compulsory acquisition of the portion of land and further proximity to the highway.
15. That the Petitioner made a formal request to the National Land Commission following up on the compensation. That the National Land Commission explained that it was impossible to take any action for the reason that the Respondent had not provided information on its occupation, use and acquisition of the portion of land. That the National Land Commission referred the Petitioner to the Respondent but that the Respondent was not responsive.
16. The Petitioner further stated that the Respondent's actions have breached the Petitioner's right to fair administrative action by failing to publish its intention to compulsorily acquire a portion of the Petitioner's property and failing to invite the Petitioner to make submissions on its claim for compensation.
17. That the Petitioner undertook a valuation of the whole land which land was valued at KShs.17,600,000/-.
18. That the deprivation of the Petitioner's property is arbitrary and in contravention of the provisions of *the Constitution*.
19. The Petitioner attached documents to the Supporting Affidavit namely; Title deed for the suit land dated 16<sup>th</sup> February, 2022, Survey Ground report by Opiyo & Associates, Letter dated 18<sup>th</sup> May, 2021 to the Chairman, National Land Commission from TLO Advocates, Letter dated 20<sup>th</sup> August, 2021 addressed to Director KNHA by TLO Advocates, Letter dated 24<sup>th</sup> January, 2022 to the Director KENHA by TLO Advocates, Valuation by ADD Property Consultants dated 6<sup>th</sup> September, 2022, Certificate of official search dated 1<sup>st</sup> September, 2011 in respect of the suit land.



20. The Petitioner also exhibited the documents listed in its Supplementary list of documents dated 7<sup>th</sup> June, 2023.
21. The Respondent's evidence comprised of the contents of the witness statement of Robert Itambo dated 23<sup>rd</sup> February, 2024 and documents in the list of documents dated 23<sup>rd</sup> February, 2024 and the supplementary list of documents dated 9<sup>th</sup> October, 2024.
22. The witness stated that he was a senior surveyor working in the Survey Department of the Respondent. That sometime in the year 1983/1984 the then Ministry of Roads acquired some land parcels around Mamboleo area for purposes of constructing the rail over the road on parts of the Kisumu – Kakamega road. That a strip of 10m was acquired on either side of the road within the location of the property known as Kisumu/Kanyakwar "A"/73 to increase the road reserve from 40m to 60m.
23. That 0.029 Ha was lawfully and procedurally acquired from one Joseph Otieno Owino who was identified as the owner of the suit property.
24. That the suit property was registered in the name of Joseph Otieno Owino who was among owners of the several parcels which were compulsorily acquired by the Government of Kenya for construction of the rail over the road on parts of the Kisumu-Kakamega road and that after the compulsory acquisition, the people whose lands were acquired including Joseph Otieno Owino were compensated.
25. That the compensation was based on the value of the property and in accordance with the provisions of the Land Acquisition Act Cap 295 (repealed).
26. That the Petitioner ought to be estopped from claiming compensation and/or ownership of the 0.029 Ha legally acquired by the government.
27. The Respondent exhibited copies of the maps, copies of the letters from E.B. Mburunga to the Permanent Secretary, Ministry of Transport and Communication, list of the persons affected and cheque numbers and pictures of the constructed road.

### **Petitioner's Submissions**

28. Written submissions dated 24<sup>th</sup> March, 2025 were filed by the firm of TLO Advocates LLP on behalf of the Petitioner. Counsel submitted that the matter concerned compulsory acquisition of a portion of land known as Kisumu/Kanyakwar "A"/73 measuring 0.01 Ha which was encroached onto by the Respondent and taken arbitrarily in contravention of the constitutional and statutory provisions.
29. That the acquisition was done without adherence to the due process enshrined in *the Constitution* of Kenya 2010, specifically article 40 thereof which protect the right to property and mandates prompt, fair and adequate compensation for land compulsorily acquired. That the Petitioner invoked article 47 which guarantees the right to fair administrative action as the Respondents failed to engage in lawful construction or provide proper notice before taking possession of the land.

Counsel framed the issues for determination as;

- a. whether or not the compulsory acquisition of the Petitioner's portion of land measuring 0.01 Ha complied with the constitutional and statutory requirements.
- b. whether the Petitioner's right to fair administrative action under article 47 of *the Constitution* was violated.
- c. whether the Petitioner is entitled to the relief sought.



30. Counsel submitted that the Respondent encroached into the Petitioner's land to the extent that the residue of the property could no longer be used for commercial or residential purposes.
31. Relying on the provisions of Section 9 of the Land Acquisition Act, repealed, Counsel submitted that the said provision of law laid out an elaborate inquiry procedure to ascertain ownership rights prior to compensation.
32. That there is nothing provided on record by the Respondent to show that an inquiry process was conducted whose end result concluded that one Joseph Otieno Owino was the legitimate proprietor of the suit property at the time.
33. That the Petitioner submitted a survey report which shows that the Respondent has indeed encroached onto the suit land which evidence remained undisputed given that the Respondent acknowledged that indeed a portion of the suit property was excised for purposes of expansion of the Kisumu – Kisumu Highway.
34. Counsel relief on the case of Patrick Musimba -vs- National Land Commission & 4 Others [2016]eKLR on due diligence in the process of compulsory acquisition of land and the case of Omoro -vs- National Land Commission on the gravity of fair and just compensation upon compulsory acquisition.
35. On whether the Petitioner's right to property under article 40 of *the Constitution* was violated, Counsel submitted that the lack of adherence to due process, particularly the failure to provide prompt and just compensation constitutes an arbitrary deprivation of property.
36. Counsel submitted further that it is a fundamental principle that compulsory acquisition by the state should not render the remaining land economically unviable.
37. On whether the Petitioner's right to fair administrative action under article 47 of *the Constitution* was violated, Counsel submitted that the Petitioner was not afforded prior and adequate notice of intended acquisition nor was there an opportunity to be heard through the mandatory inquiry process.
38. That the actions of the Respondent were neither lawful nor procedurally fair as they bypassed the established mechanisms designed to protect individuals from arbitrary administrative decisions.
39. That the absence of procedural safeguards amounts to a violation of its right to fair administrative action.
40. Relying on the case of Patrick Musimba -vs- National Land Commission & 4 Others, Counsel submitted that the Petitioner is entitled to the relief sought. That according to the valuation report produced by the Petitioner as exhibit, the market value of the whole of the suit land measuring 0.088 Ha was Kshs.17,600,000/-.
41. That the valuation report was not challenged. Counsel urged the court to award Kshs.2,000,000 as special damages for the affected portion of 0.01 Ha.
42. Counsel relied on the case of Attorney General -vs- Zinj Limited (Petition 1 of 2020) [2021]KESC 23(KLR) (3 December 2021) Judgement.
43. Counsel also prayed for an award of Kshs.1,000,000/- general damages for breach of article 47 of *the Constitution* and Kshs.3,000,000/- for breach of article 40 of *the Constitution*. In arriving at these figures, the Petitioner placed reliance on the case of Isabel Waithira Njoroge -vs- Permanent Secretary Ministry of State for Provincial Administration & Internal Security & 4 Others [2014]eKLR.



44. Counsel urged the court to grant the relief sought so as to uphold the rule of law and protect the sanctity of property rights as enshrined in *the Constitution*.

### **Respondent's submissions**

45. On behalf of the Respondent, written submissions dated 20<sup>th</sup> June, 2025 were filed. Counsel framed the issues for determination in the petition to be;
- a. whether the Respondent lawfully and legally acquired the suit property;
  - b. whether the Petitioner has locus standi to institute the petition.
  - c. Whether the petition has set out with reasonable degree of precision the relevant provisions of the constitutional law that were allegedly infringed.
  - d. Whether the Petitioner is entitled to the relief sought.
46. On whether the Respondent lawfully acquired the suit property, Counsel submitted that at the time when the Respondent compulsorily acquired the land the relevant law was the Land Acquisition Act, Cap 295 and the repealed Constitution of Kenya.
47. That due process was followed in the acquisition of the suit property as shown through the Respondent's bundle of documents. That the Petitioner had a duty to ensure due diligence including historical search. That it is the Petitioner who has encroached onto public land.
48. Relying on the cases on Nyawir -vs- Trustees Evangelical Lutheran Church Kenya & Another [2024] KECLC 3775 (KLR) and Ondiege (Suing as the Personal Representative of the Estate of Cornel Ondege Ogola) -vs- Commissioner of Land & 76 Others [2024] KEELC 607 (KLR).
49. Counsel submitted that among the properties listed for compulsory acquisition was Kanyakwar "A". That the suit property was gazetted for compulsory acquisition and that compensation was issued through the District Officer.
50. On whether the Petitioner has locus standi to institute the petition, Counsel submitted that the Petitioner did not have the locus standi as it was not the owner of the land at the time of acquisition, that the owner of the land then, one Joseph Otieno Owino who was duly compensated.
51. Relying on the case of Anarita Karimi Njeru -vs- Republic (1979)eKLR, Counsel submitted that the petitioner had not pleaded with precision the constitutional provisions that have been infringed. That the Petitioner has quoted article of *the Constitution* of Kenya 2010 which are not applicable to compulsory acquisition.
52. On whether or not the Petitioner is entitled to the relief sought, the Respondent submitted that the Petitioner cannot claim deprivation of property acquired before its ownership. That *the Constitution* under article 40 empowers the state to acquire property for public purposes and that in the present case, it was for construction of a road. That the land was acquired in the 1980s. That it is the Petitioner's property which has encroached onto public land as shown in the Respondent's exhibit 1.
53. Secondly, that the Petitioner has not demonstrated how article 47 of *the Constitution* was violated. That the prayers for an order of mandamus is not merited because the acquisition was already gazetted and the relevant proprietor adequately compensated.
54. Relying on the case of Jogoo Kimakia Bus Services Ltd -vs- Electrocom International Limited (1992) KLR 177 on the claim for damages, Counsel submitted that the Petitioner has not proved a legal right or duty infringed by the Respondent and thus ought not to be granted.



55. Counsel urged the court to dismiss the petition with costs.

### **Interested parties**

56. Apart from the Memorandum of Appearance dated 19<sup>th</sup> February, 2025 filed on behalf of the Interested Parties, no further pleadings or submissions were filed on their behalf.

### **Issues for determination**

57. From the pleadings and the evidence filed and the submissions made, the issues that emerge for determination are;

- a. Whether or not the Petition meets the threshold set in the case of Anarita Karimi Njeru.
- b. Whether or not the Respondent unlawfully compulsorily acquired the Petitioner's land and thereby breached the Petitioner's right to property and fair administrative action as enshrined in articles 40 and 47 of *the Constitution* of Kenya respectively.
- c. Whether or not the Petitioner is entitled to the relief sought.
- d. Costs.

### **Analysis and determination**

58. The first issue for determination is whether the petition meets the constitutional threshold. The Petitioner's case is that it right to property as enshrined in article 40 of *the constitution* and the right to fair administrative action provided for in article 47 of *the Constitution* were violated by the Respondent's actions. The actions complained of as forming the manner of violation is compulsory acquisition of the Petitioner's land without following due process and failing to compensate the Petitioner as by law required.

59. I find that the petition meets the threshold. Whether the allegations are true will determined in subsequent issue herein.

60. The second issue for determination is whether or not the Respondents unlawfully compulsorily acquired the petitioners land.

61. There is no dispute that the suit land was as at the time of filing the petition registered in the name of the Petitioner.

62. A title deed dated 16<sup>th</sup> February, 2022 and certificate of official search both annexed to the Supporting Affidavit show that the suit land was registered in favour of the Petitioner on 16<sup>th</sup> February, 2022 and title deed issued on the same date. Both the search and title deed show that the suit land measures 0.088 Ha.

63. There is no evidence by the Petitioner as to when the alleged compulsory acquisition took place.

64. The survey ground report by Opiyo and Associate showed that as at the date of the report, which was 14<sup>th</sup> February, 2021 KENHA had already taken possession of the portion which the survey found measured 0.01 Ha.

65. It is noteworthy that as at the date of the Ground Survey report, the suit land had not become the property of the Petitioner.



66. Further, even the survey report was done at the instance of Quaser Limited P.O. Box 64196 – 00620 Nairobi, who is named in the report as the client.
67. The demand notices by the Petitioner’s Counsel were written on behalf of Quaser Limited save for the statutory notice.
68. It is clear that the Petitioner acquired the land with the issue of compulsory acquisition of a portion thereof existing.
69. According to the Respondent, the portion of land was acquired in the year 1983/1984 and the owner thereof then compensated.
70. In support of this, the Respondent exhibited a letter dated 13<sup>th</sup> June 1984 showing payment of compensation to the people whose lands had been acquired.
71. The Respondent also exhibited maps showing that the land that had been compulsorily acquired.
72. I find that the Petitioner has not sufficiently demonstrated that its land was unlawfully compulsorily acquired. Having not been a registered owner at the time of acquisition, the Petitioner was not entitled for fair administrative action at the time. The petitioner also had no proprietary rights over the suit land that were capable of being violated as at the time of the acquisition of the land.
73. The next issue for determination is whether or not the Petitioner is entitled to the relief sought.
74. In view of the finding herein above, the Petitioner is not entitled to the relief sought. The Petitioner clearly acquired land which had portion of it already acquired.

### **Disposition**

75. For the foregoing reasons, the court finds that the petition lacks merit and hereby dismiss it. Costs to the Respondent.

Orders accordingly.

**JUDGEMENT DATED AND SIGNED AT KISUMU AND DELIVERED THIS 25<sup>TH</sup> DAY OF SEPTEMBER, 2025 VIRTUALLY THROUGH MICROSOFT TEAMS ONLINE APPLICATION.**

**E. ASATI,**

**JUDGE.**

In the presence of:

Maureen - Court Assistant.

Murimi for the Petitioner.

Anyango for the Respondent.

N/A for the Interested Parties.

