



**Vesco Properties Limited v Kenya Power & Lighting Company Limited; Kenya National Highways Authority (Third party) (Environment and Land Petition E015 of 2023) [2025] KEELC 7547 (KLR) (30 October 2025) (Judgment)**

Neutral citation: [2025] KEELC 7547 (KLR)

**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT MALINDI**

**ENVIRONMENT AND LAND PETITION E015 OF 2023**

**EK MAKORI, J**

**OCTOBER 30, 2025**

**IN THE MATTER OF ARTICLES 1, 2, 3, 10 (2), 19, 20, 21, 22, 23, 40, 47, 48, 60, AND 165 OF THE CONSTITUTION OF KENYA, 2010.**

**IN THE MATTER OF CONTRAVENTION OF FUNDAMENTAL RIGHTS AND FREEDOMS UNDER ARTICLES 1, 3, 27, 28, 40, 47, 48, AND 50 OF THE CONSTITUTION OF KENYA, 2010, AND ALL OTHER ENABLING PROVISIONS OF LAW.**

**AND**

**IN THE MATTER OF FAIR ADMINISTRATIVE ACTIONS ACT, 2015.**

**AND**

**IN THE MATTER OF ENERGY ACT, CAP 314 LAWS OF KENYA.**

**AND**

**IN THE MATTER OF TRESPASS ACT, CAP 294 IN THE MATTER OF THE TRESPASS ACT, CAP 294 LAWS OF KENYA.**

**AND**

**IN THE MATTER OF ENCROACHMENT OF LAND PLOT NO. KILIFI/MTWAPA/407 ENCOMPASSING SUBDIVISIONS NOS. 6151, 6152, 6153, 6254, 6155, AND 6156.**

**BETWEEN**

**VESCO PROPERTIES LIMITED ..... PETITIONER**

**AND**

**KENYA POWER & LIGHTING COMPANY LIMITED ..... RESPONDENT**

**AND**

**KENYA NATIONAL HIGHWAYS AUTHORITY ..... THIRD PARTY**



## JUDGMENT

1. The petitioner submitted their case to the court through a petition dated April 24, 2023. In the petition, the petitioner contended that the respondent encroached upon their land and installed electrical poles and structures without securing the requisite consent.
2. The petitioner therefore sought the following reliefs:
  - a. A declaration that the petitioner's fundamental rights and freedoms as enshrined under Articles 40, 47, 48, and 60 of *the Constitution* of Kenya 2010 have been contravened and infringed upon by the respondent.
  - b. A declaration that the respondent's actions of erecting electricity poles and other structures on Plot Nos. 6151, 6152, 6153, 6154, 6155, and 6156 are illegal, unlawful, wrongful, and an infringement and violation of the petitioner's constitutional rights to property.
  - c. A conservatory order restraining, prohibiting, and stopping the respondent, jointly and severally, along with their agents, officers, or any person acting under them, from entering onto, trespassing, encroaching, or in any way interfering with the petitioner's property rights, including the right to quiet possession and enjoyment of the suit property.
  - d. Any other reliefs aimed at the enforcement of the rights of the petitioner under *the Constitution*.
  - e. Costs.
3. The petition is supported by the witness statement of Halai Praful Velji Shamji dated April 24, 2023, along with the annexures attached to it.
4. In response to the petition, the respondent filed a replying affidavit sworn on April 1, 2025, by Emmanuel Ochieng Ouma.
5. The respondent filed a third-party notice, which brought the third party (sic) into these proceedings. One Michael Obop, a surveyor representing the third party, filed a replying affidavit sworn on May 2, 2025.
6. The petition was resolved through the statements, affidavits, and submissions filed by the parties. I acknowledge receipt of submissions from counsel representing the petitioners, the respondents, and the third party, and I am grateful; this has gone a long way in resolving the issues raised in this petition.
7. Arising from the materials presented before me and the submissions by the parties, the issues I frame for the court's determination are whether the current petition is res sub judice Malindi ELC Petition No. 15 of 2022, whether the respondent trespassed onto the petitioner's property, whether the petitioner is entitled to the reliefs sought, and who should bear the costs of the current petition.
8. The petitioner, through its Director, claims to be the legal and beneficial owner of LR Nos. 6151-6156, originating from the original parcel KILIFI/MTWAPA/407 and subsequent subdivisions 2640-2645. The petitioner obtained the property in 2008, as evidenced by the Witness Statement dated May 18, 2022, and Supporting Affidavit dated May 17, 2022.
9. In 2018, KENHA demolished the external perimeter wall without prior notice, claiming it encroached on the road reserve. In good faith, the petitioner engaged KENHA and Kilifi County surveyors, and



a re-survey was conducted. Beacons were placed, and new subdivision titles (6151–6156) were issued. The petitioner then constructed a new perimeter wall within those beacons. KENHA now plans to demolish the existing wall again and forcibly acquire 3.5 meters of the property for the Mombasa-Malindi Nyali-Mtwapa road dualing project. However, no gazettelement or compulsory acquisition process under the *Land Act* has been followed. Neighboring plots along the corridor have been gazetted and compensated; the petitioners have not. Instead, the respondent relies on a printed “mutation form” produced by its surveyor as the basis for acquisition.

10. Conversely, the respondent argues that they stated the disputed electricity power lines were built on the road reserve with approval from the third party during the dualling of the Nyali Bridge-Mtwapa-Kwa Kadzengo (A7) road project. The respondent also claimed that, before the commencement of the dualling, the third party, through its agent, Victoria Engineering Co. Ltd., applied on July 11, 2023, for permission to relocate its power lines to facilitate the construction. After paying the required fees, the respondent relocated its power lines within the approved area of the road reserve. The respondent, in its chamber summons application dated November 11, 2024, requested permission to issue a third-party notice against the KENHA (the third party), which this court granted. This was to enable the court to understand the origins of the matter and that the power lines had been approved for placement on a road reserve.
11. The third party averred that, under *the Constitution* of Kenya (2010), the mandate for the construction and operation of National Trunk Roads falls squarely on the National Government, to which the third party here is the Authority mandated to construct, upgrade, rehabilitate, and maintain National Trunk Roads.
12. The respondent applied for approval to install power lines along a road reserve. The application was reviewed and approved after the required fee was paid. Once approved, it is a condition that the respondent shall install their power cables parallel to the road, with poles no more than two (2) meters from the edge of the road reserve. It is the respondent's responsibility to ensure that the power cables are correctly placed within the road reserve.
13. The third-party states that the two-and-a-half (2.5) meter strip resulting from the subdivision of parcel no. KILIFI/MTWAPA/407, which includes subdivisions Nos. 6151, 6152, 6153, 6154, 6155, and 6156 are currently involved in a pending court case—Malindi High Court Petition No. 15 of 2022: Vescon Properties Ltd v Kenya National Highways Authority, as shown in the pleadings filed in ELC Petition No. 15 of 2022.
14. Let me start with the issue of the res sub judice. By a petition dated May 17, 2022, in ELC Petition No. 15 of 2022, the petitioner seeks the following reliefs:
  - (a) A declaration that the petitioner is the rightful, legal, and beneficial owner of Plot No. Kilifi/Mtwapa/407, which includes subdivisions Nos. 6151, 6152, 6153, 6154, 6155, and 6156 (“the suit property”), each measuring approximately 0.039 hectares;
  - (b) A declaration that the petitioner's fundamental rights and freedoms, as protected under Articles 40, 47, 48, and 60 of *the Constitution* of Kenya, 2010, have been violated and infringed upon by the respondent;
  - (c) A declaration that the respondent's intention to demolish the structures on the suit property is illegal, unlawful, wrongful, and constitutes an infringement and violation of the petitioner's constitutional right to property;



- (d) A conservatory order restraining, prohibiting, and preventing the respondent from entering, trespassing, encroaching, demolishing, or in any way interfering with the petitioner's proprietary rights, including the right to quiet possession and enjoyment of the suit premises;
- (e) That the court be pleased to issue any appropriate relief it deems fit.
15. I notice that directions have already been given regarding the disposal of that petition, parties have filed their written submissions, and my brother Njoroge J. has set a judgment date for January 29, 2026.
16. At the core of that petition are issues about whether the petitioner owns the disputed parcels, whether there has been an encroachment onto the petitioner's private land, and whether the electricity poles that are fixed or will be fixed are within a road reserve—also the subject of this petition. In fact, the petitioner has filed congruent submissions here and in the previous petition!
17. The res sub judice rule prevents courts from proceeding with a case that is already the subject of another pending suit between the same parties. This doctrine is rooted in common law and aims to prevent conflicting decisions, abuse of process, and multiple lawsuits. It is based on the principle that once a matter is before a court, no other court should entertain a case with the same issues directly and substantially in question, pending the outcome of the first suit.
18. The Supreme Court of Kenya in *Kenya National Commission on Human Rights v Attorney General; Independent Electoral & Boundaries Commission & 16 others (Interested Parties) (2020) eKLR* pronounced itself on the principle of sub judice as follows:
- “(67) The term ‘sub-judice’ is defined in Black’s Law Dictionary 9th Edition as: “Before the Court or Judge for determination.”
- The purpose of the sub-judice rule is to stop the filing of a multiplicity of suits between the same parties or those claiming under them over the same subject matter so as to avoid abuse of the Court process and diminish the chances of courts, with competent jurisdiction, issuing conflicting decisions over the same subject matter. This means that when two or more cases are filed between the same parties on the same subject matter before courts with jurisdiction, the matter that is filed later ought to be stayed in order to await the determination to be made in the earlier suit. A party that seeks to invoke the doctrine of res sub-judice must therefore establish that: there is more than one suit over the same subject matter; that one suit was instituted before the other; that both suits are pending before courts of competent jurisdiction, and lastly, that the suits are between the same parties or their representatives.”
19. As observed, the former petition was filed earlier than the current one, and the issues involved are similar. In the former suit, the petitioner here sued the third party, claiming several violations identical to those raised against the respondent in this petition. The respondent, here in turn, states that they were granted permission to place the power lines within a road reserve, which falls within the ambit of the third party, making the current petition and the former identical.
20. The main issue in both petitions concerns ownership, which is particularly important in the first petition. If the judge in that case determines that the petitioner does not have proprietary rights to the properties or that the properties are within a road reserve, no compensation will be awarded, and the question of trespass will not come up.



21. In my view, based on the foregoing, this petition should have been stayed pending the outcome of the former petition.
22. As it stands, the issue of ownership must be addressed first before any form of compensation is sought or anticipated.
23. In that case, I do not need to address the other issues raised in the current petition. I down tools.
24. Consequently, the petition is hereby dismissed with costs. It represents an abuse of the court process.

**DATED, SIGNED, AND DELIVERED VIRTUALLY AT MALINDI ON THIS 30<sup>TH</sup> DAY OF OCTOBER, 2025.**

**E. K. MAKORI**

**JUDGE**

In the presence of:

Ms. Ombat for the Petitioner

Mr. Ododa Respondent.

Happy: Court Assistant

In the absence of:

Ms. Bodo for the Third Party

