



**Karanja & 14 others v National Land Commission & 6 others; Cheruiyot & another (Interested Parties) (Trading as Negra Communication Enterprises) (Environment and Land Petition E002 of 2023) [2026] KEELC 429 (KLR) (29 January 2026) (Judgment)**

Neutral citation: [2026] KEELC 429 (KLR)

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT THIKA**  
**ENVIRONMENT AND LAND PETITION E002 OF 2023**  
**JA MOGENI, J**  
**JANUARY 29, 2026**

**BETWEEN**

**MARY MUKUHI KARANJA ..... 1<sup>ST</sup> PETITIONER**  
**CAROLYNE AMINA OKALO ..... 2<sup>ND</sup> PETITIONER**  
**DINA NKIROTE KOBIA ..... 3<sup>RD</sup> PETITIONER**  
**SELINA WANJIKU NGUGI ..... 4<sup>TH</sup> PETITIONER**  
**PHANICE KAPKARICH NYAGA ..... 5<sup>TH</sup> PETITIONER**  
**VITALIS LUMBASI MUKE ..... 6<sup>TH</sup> PETITIONER**  
**PETER MAINA MWIRIGI ..... 7<sup>TH</sup> PETITIONER**  
**JOSEPHAT MAINA MBUGUA ..... 8<sup>TH</sup> PETITIONER**  
**REGINA WANGO KASAU ..... 9<sup>TH</sup> PETITIONER**  
**RAPHAEL MWANGI MABUYA ..... 10<sup>TH</sup> PETITIONER**  
**RONALD NAMASAKA MASINDE ..... 11<sup>TH</sup> PETITIONER**  
**ELIZAPHAN MUURO MAINA ..... 12<sup>TH</sup> PETITIONER**  
**STEPHEN KINYUA MABUYA ..... 13<sup>TH</sup> PETITIONER**  
**MARJORIE NDANU KIVUVA ..... 14<sup>TH</sup> PETITIONER**  
**MONICA WAIRIMU WAIKWA ..... 15<sup>TH</sup> PETITIONER**

**AND**

**NATIONAL LAND COMMISSION ..... 1<sup>ST</sup> RESPONDENT**  
**LAND REGISTRAR, RUIRU ..... 2<sup>ND</sup> RESPONDENT**



DIRECTOR OF SURVEY OF KENYA ..... 3<sup>RD</sup> RESPONDENT  
CRETUM PROPERTIES LIMITED ..... 4<sup>TH</sup> RESPONDENT  
THE DEPUTY COUNTY COMMISSIONER,RUIRU SUB COUNTY .... 5<sup>TH</sup>  
RESPONDENT  
HON INSPECTOR GENERAL OF POLICE ..... 6<sup>TH</sup> RESPONDENT  
HON ATTORNEY GENERAL ..... 7<sup>TH</sup> RESPONDENT

AND

JONATHAN KIMUTAI CHERUIYOT ..... INTERESTED PARTY  
MAX TRUTENAU ..... INTERESTED PARTY  
TRADING AS NEGRA COMMUNICATION ENTERPRISES

### JUDGMENT

1. The Petition for hearing and determination before me is dated 27/12/2023. The Petition was brought under the dint of the provisions of Articles 1, 2, 3, 10, 19, 20, 21, 22, 23, 28, 35, 40, 47, 60, 62, 64, 67, 159, 258 & 259 of the Constitution of Kenya 2010, Sections 3, 4, 5, 7 & Part VIII of The Land Act No. 6 of 2012 and The Land (Assessment of Just Compensation) Rules, 2017, Sections 24, 25 & 26 of The Land Registration Act No. 3 of 2012 and the Fair Administrative of Actions Act.
2. The Petitioners prayed for the following orders and declarations against the Respondents in the Petition: -
  - a. A declaration that there was no proper, regular and/or lawful compulsory acquisition of the Petitioners' respective suit properties as contemplated under Article 40 (3) of the Constitution and Part VIII of the Land Act, prior to and for purposes of the project;
  - b. A declaration that the continued construction of a road across the Petitioners' (the project), is irregular, unlawful, unconstitutional and a gross violation of the Petitioners' property rights as set out under Article 40 of the Constitution and the relevant statutes, as well as the Petitioners' rights to Fair Administrative Action as set out under Article 47 of the Constitution and the Fair Administrative Action Act.
  - c. A declaration that the opaque and secretive manner with which the project was conceptualized, initiated and is being undertaken, contravenes the values and principles of governance as laid out under Article 10 of the Constitution, and in particular, on transparency and accountability;
  - d. A declaration that the failure to disclose details of the projects, to wit, the project name, purpose, measurements, owner contractor(s), manager etc, amounts to a gross violation of the Petitioners' rights under Article 35 of the Constitution to access such information;
  - e. An order of Prohibition, prohibiting any further construction of a road on the suit properties forthwith;
  - f. An order of mandamus directing and/or compelling the 1<sup>st</sup>, 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> Respondents herein, whether by themselves, their agents, principals, servants, employees or assigns, to withdraw



from the suit properties in entirety, together with any such paving and road construction equipment being used in the project;

- g. A permanent injunction restraining the Respondents, whether by themselves, their agents, employees, servants or assigns from further trespassing on the suit properties;
  - h. An award for damages;
  - i. Costs of the Petition;
  - j. Any other relief(s) that the Honorable Court may deem just and appropriate to award under the circumstances.
3. The Petitioner's case is expressed through the Petition and the Supporting Affidavit of Ronald Namasaka Masinde who filed an Authority to plead dated 27/12/2023 signed by the other Petitioners.
  4. Contemporaneously with the Petition the Petitioners filed an Application dated 27/12/2023 seeking interim orders to preserve the suit property and prohibition of any further construction and/or development of a road on the suit properties pending the hearing of the application and seeking orders to conserve the Petitioners' properties as listed at paragraph 1 of the Petition and maintain status quo.
  5. In her Ruling dated 9/10/2024, my sister Lady Justice Kemei allowed the application and issued conservatory orders preserving the Petitioners' properties as listed and status quo orders restraining and/or prohibiting any further construction and/or development of the road on the said properties.
  6. When the parties appeared in Court on 19/05/2025 the Counsel for the Interested Party Mr. Kaka sought the Court's direction on their application for joinder dated 31/01/2025. Since no party opposed their application, it was allowed as prayed. At the same time the Court issued directions on canvassing of the Petition and directed parties to file and exchange their respective submissions.

### **The Petitioners' Case**

7. The Petitioners have lodged this Petition jointly to enforce and protect their property rights against what they have termed as irregular and unlawful acquisition of their respective properties and enumerated under paragraph 1 of the Petition; all having been acquired on diverse dates between 2013 to 2023.
8. The Petitioners have sued both public institutions, public officers and a private company all who seem to have a connection to (according to the Petitioners) denying them their right to their land.
9. The Petitioners claim to be duly registered owners of the suit properties mentioned at paragraph 1 of the Petition located near Kamakis area, Ruiru in Kiambu County. Each Petitioner has attached to the Petition a valid title for their respective property.
10. The Petitioners allege to be in occupation of their respective properties which they claim to have developed and also some have charged their properties to third parties such as the 4<sup>th</sup> Petitioner who has charged their two properties to Co-operative Bank of Kenya for a loan facility of Kesh 4 million.
11. They allege that on or about 17/12/2023 a group of surveyors and contractors visited, scoped and mapped their suit properties without prior notice with a view to constructing, building and /or opening up a road through the Petitioners' properties situated on Ruiru Kiu Block 2 (Githunguri Ranching).



12. That despite the lack of prior notice, lack of public participation and lack of just compensation of the Petitioners or provision for adequate time for those living within the said properties to vacate, the project is currently ongoing.
13. It is the Petitioners' contention that the project is being undertaken by agents, officers and/or employees of Cretum Properties Limited, the 4<sup>th</sup> Respondent who has trespassed on the suit properties using a wide range of paving and road construction equipment to level the road, without the Petitioners' consent or regard to their rights, interests or development.
14. Further that there is no sign placed containing details of the project and this is done according to the Petitioners under the armed guard of the Police who have shielded the contractor from angry residents demanding that the project stops to facilitate transparency, accountability and public participation.
15. That from some road markings, the Petitioners allege that the road is set to and/or pass through some of the Petitioners' house where they reside with their families and there is a risk of having the said houses demolished, destroyed or vandalized.

### **The Legal Foundation of the Petition**

16. Article 1, 2 and 3 which speak to the sovereignty of the people of Kenya and affirmation of the supremacy of the Constitution where every person is obligated to respect, uphold and defend it.
17. The Petition also referred to Article 10 which on the national values and principles of governance that are binding to all state organs, state officers, public officers and all persons as they, inter alia, apply or interpret the Constitution and make or implement public policy decisions to include, the rule of law, participation of the people, human dignity, equity, social justice, inclusiveness, equality, human rights, non-discrimination and protection of the marginalized, good governance, integrity, transparency and accountability.
18. At the same time the Petitioners also referred to Article 20 on the Bill of Rights, Article 21 on the need for state organs to promote and fulfil the fundamental freedoms in the Bill of Rights, Article 22 which allows any person to institute Court proceedings claiming a right or fundamental freedom in the Bill of Rights. Article 23 which refers to the Court's jurisdiction to enforce rights and fundamental freedoms, Article 28 on respect for human dignity, Article 35 which provides for access to information held by the state or by citizens for protection of right to information in protection of any right or fundamental freedom.
19. At the same time the Petitioners hinged their Petition on Article 40 which protects the right of every person individually or in association with others, to acquire and own property of any description, in any part of Kenya subject to Article 65. They stated that the State is not allowed to deprive a person of property of any description or of any interest in, or right over, property of any description unless the deprivation;
  - a. results from an acquisition of land or an interest in land or a conversion of an interest in land, or title to land, in accordance with Chapter Five; or
  - b. is for a public purpose or in the public interest and is carried out in accordance with this Constitution and any Act of Parliament that-
    - i. requires prompt payment in full, of just compensation to the person; and
    - ii. allows any person who has an interest in, or right over, that property a right of access to a Court of law.



They further stated that provision may be made for compensation to be paid to occupants in the land that may be acquired in good faith under clause (iii) of Article 40 (b) who may not hold title in land.

20. At the same time, they also referred to Article 47 on Right to Administrative Action which is expeditious, efficient, lawful, reasonable and procedurally fair and that where a right or fundamental freedom may be adversely affected by an administrative action, then the person has the right to be given written reasons for the action.
21. The Petitioners also referred to Articles 60, 67, 159, 258 and 259 of the Constitution. At the same time, they made reference to the Land Act under Sections 3, 4, 5 and 7 of the Act and Part VIII Sections 107-133 which gives effect to Article 40 (3) of the Constitution on compensation where there has been compulsory acquisition. Sections 24, 25 and 26 of the Land Act.
22. The Petitioners have also listed particulars of violation, contravention or threat to their rights by the Respondents.

“Particulars of violation, contravention or threat.

- a. Failure by the relevant organ or department of the National or County Government to submit a request for acquisition of the suit properties to the National Land Commission contrary to Section 107 of the Land Act
- b. Lack of Approval by the National Land Commission for any such request for acquisition of the suit properties by the relevant organ or department of the National or County Government, contrary to Section 107 of the Land Act
- c. Failure by the National Land Commission to issue or publish a gazette notice as prescribed under section 107 (5) of the Land Act, signifying the Commission’s approval for the acquisition of the suit properties
- d. Failure by the National Land Commission or the concerned organ or department of the National or County Government to issue prior notice or conduct public participation, encompassing the Petitioners herein as well as the area residents and other affected land owners prior to initiating the project, contrary to Articles 10 & 47 of the Constitution
- e. Failure by the National Land Commission or the concerned organ or department of the National or County Government to disclose details of the project to the Petitioners herein, area residents and other affected land owners, contrary to Articles 10, 35 & 47 of the Constitution; especially given that the project affects their rights and interests.
- f. Failure by the National Land Commission or the concerned organ or department of the National or County Government to provide prompt and just compensation to the Petitioners herein prior to the alienating and/or trespassing on their land and undertaking the road construction; contrary to Article 40 (3) of the Constitution
- g. Trespass and/or occupation of the suit properties, without the Petitioners’ consent any color of right whatsoever or regard for the Petitioners’ property rights, by the agents and/or employees of the 4<sup>th</sup> Respondent, the 5<sup>th</sup> Respondent and police officers under the command of the 6<sup>th</sup> Respondent for



purpose of building a road on the said properties; all of which is contrary to Articles 40 & 47 of the *Constitution*

- h. Threatening to evict the Petitioners without a valid Court order, issuing them sufficient notice or granting them reasonable time within which to evacuate.”

23. The Petitioners therefore urged the Court to grant the orders as prayed while admitting the jurisdiction of this Honorable Court.

### **The Respondents’ Case**

24. From my scrutiny of the filed Court documents, it seems that none of the Respondents filed any response to the Petition. This therefore means that the Petition is undefended.

### **The Written Submissions by the Petitioner**

25. The Petitioners through the Law firm of Messrs. Wangui Kuria and Co. Advocates filed their written submissions dated 13/12/2025.

26. The Petitioners submitted that they are the registered proprietors of several properties as set out at paragraph 1 of the Petition. That sometime on 17/12/2023 a group of surveyors and contractors visited, scoped and mapped the suit properties, without prior notice or introducing themselves to the Petitioners. That the group was accompanied by Police under the command of the 5<sup>th</sup> Respondent.

27. They submit that unbeknownst to the Petitioners there were preparations underway for the construction of a road passing through their properties, which began in earnest a few days later thus necessitating the instant Petition where the Petitioners have alleged violation of their rights as particularized at paragraph D of their Petition.

28. It is the Petitioner’s submission that the 1<sup>st</sup> Respondent filed a Replying Affidavit to the Petitioner’s interlocutory application where they conceded that they had not received any request to compulsorily acquire the Petitioners’ properties for the purpose of development of a road and neither was such a process initiated.

29. Further, they submitted that the Interested Party through their application dated 31/01/2025 stated that they were the ones laying claim of ownership over the Petitioners’ properties and that they had instructed the 4<sup>th</sup> Respondent to develop the road. Although the Petitioners noted that the Interested Party failed to file a substantive response to elaborate or support their claim of ownership or justify their actions.

30. Therefore, the Petitioners submit that they have corroborated and proved their claim on the particulars of violation of their rights in accordance with the threshold of the classic case of Anarita Karimi Njeru vs Republic (1976).

31. That this, coupled with the fact that the main Petition is unopposed, justifies the issuance of the declaratory and injunctive reliefs sought in the Petition as against the Respondents, so as to affirm and protect the Petitioners’ titles which have not been impeached. Further that their claim for damages lies with the discretion of the Court based on the circumstances abiding. That in the instant case, the road had begun on some of the properties before it was stopped.

32. It is submitted that the work of expansion and grading of the road that had been started caused anguish and trauma due to the extent of the 4<sup>th</sup> Respondent & Interested Party’s actions as can be inferred from the annexed photographs that shows the road being developed right next to people’s houses. The



situation was made worse by the fact that the latter were acting under the protection of the Police and local national administration officials which led this illegal process an air of legitimacy.

33. The Petitioners submit that an award of Kshs 100,000/- for each of the Petitioners (Kshs 1,500,000/- in total) as nominal damages would suffice to compensate them and act as a deterrent. This award ought to be apportioned on the 4<sup>th</sup> Respondent and their principal, the Interested Party, as the entities that were responsible. Thus, they submit that the instant Petition is merited and the same ought to be allowed with costs.

### **Analysis and Determination**

34. I have carefully considered all the filed pleadings pertaining to the Petition dated 27/12/2023, the Supporting Affidavits and submissions of the Petitioner, the cited authorities, provisions of Constitution of Kenya and the Provisions of the Law.
35. For the Honorable Court to reach an informed, just, fair and reasonable decision, it has condensed the subject matter into the following three (3) salient issues for its determination. These are:
- a. Whether the Petition by the Petitioners meets the threshold for Constitution Petitions.
  - b. Whether the Constitution Petition has any merit and, if affirmative, if the parties were entitled to the reliefs sought?
  - c. Who will bear the Cost of the suit?

### **Whether the Petition by the Petitioner meets the threshold for Constitution Petitions.**

36. Article 2 (1) & (4) of the Constitution of Kenya defines the Constitution as the Supreme Law of the Republic and it binds all persons and all States at all levels. This means that any law, including customary law, that is inconsistent with this Constitution is void to the extent of the inconsistency and any act or omission in contravention of this Constitution is a nullity.
37. The Petitioners relied on Article 259 among others in their Petition. Now, Article 259 (1) provides a guide on how the Constitution should be interpreted. The parameters it sets is that in interpretation any Article should take into consideration the fact that the Constitution:
- a. Promotes its purposes, values and principles;
  - b. Advances the rule of law, and the human rights and fundamental freedoms in the Bill of Rights;
  - c. Permits the development of the law; and
  - d. Contributes to good governance ....”
41. This Court must give a liberal interpretation and consideration to any provision of the Constitution and have regard to the language and wording of the Constitution and where there is no ambiguity attempt to depart from the straight texts of the Constitution must be avoided. It must always be interpreted and considered as a whole with all the provisions sustaining and coordinating each other and not destroying the other.
42. The Court of Appeal in the case of Mumo Matemu -Versus- Trusted Society of Human Rights Alliance & Another (2013) eKLR provided the standards of proof in the Constitutional Petitions as founded



in the case of Anarita Karimi Njeru -Versus- Republic [1980] eKLR 154 where the Court is satisfied that the Petitioners' claim were well pleaded and articulated with absolute particularity. It held:-

“Constitutional violations must be pleaded with a reasonable degree of precision ....”Further, in the “Thorp –Versus– Holdsworth (1886) 3 Ch. D 637 at 639, Jesse, MR said in the year 1876 and which hold true today: “The whole object of pleadings is to bring the parties to an issue and the meaning of the rule... was to prevent the issue being enlarged which would prevent either party from knowing when the cause came on for trial what the real point to be discussed and decided was. In fact, the whole meaning of the system is to narrow the parties to define issues and thereby diminish expense and delay especially as regards the amount of testimony required on either side at the hearing.”

38. The provision of Article 23 (3) of the Constitution empowers a Court to grant appropriate reliefs in any proceedings brought under Article 22 where there has been violation or threat of a violation of a fundamental right or freedom. The relief may include a conservatory order.
39. The Petitioner in this Petition, is seeking a declaration that the Respondents herein, have breached the Petitioners' Constitutional rights to acquire and own property as guaranteed by Article 40 of the Constitution of Kenya, 2010.
40. Under Article 40 of the Constitution of Kenya, 2010 (hereinafter “the Constitution”), the Petitioners have a right to acquire and own property. The said right includes the right to occupy, use and develop such property. The Respondents have breached the Petitioners' right to own and use the suit property under Article 40 of the Constitution.
41. The Respondents actions of creating a public access on the Petitioners' private property is illegal and in violation of the Petitioners' Constitutional right to property. Further the Respondents' actions of creating a public access road on the Petitioners' private property amount to compulsory acquisition of the Petitioners' private property for public use without paying any compensation to the Petitioners.
42. The Interested Party and 4<sup>th</sup> Respondent, its employees and agents already leveled a substantial portion of the road on some of the suit properties belonging to the Petitioners as was evidenced by the photographs produced and marked as ‘RNM-3a to 3K’ showing the works undertaken. There was no public participation nor were the Petitioners even notified through writing about the process thus violating Article 47 of the Constitution.
43. By taking over the Petitioners suit properties without due process the Respondents breached Article 40(3) of the Constitution which prohibits the State from depriving a person of property, any interest or right over property. The Respondent violated Article 40(3) of the Constitution by using the Petitioners' private property for public purposes (public access road) without paying any compensation to the Petitioners.
44. Article 2 (1) of the Constitution, binds all State organs to uphold the rule of law. The Respondents acted against the spirit and letter of Article 2 (1) by illegally taking over the Petitioner's property and started the process of creating a road thereon in a manner that is in breach of Article 40 (3) of the Constitution. Indeed, the averment of the Interested Party that they contracted the 4<sup>th</sup> Respondent to lay beacons on the property which the Interested Party claims to belong to them without any proof is absurd. They never filed a response to the Petition despite claiming to have instructed the 4<sup>th</sup> Respondent who was contracted to construct the road on the Interested Party's suit property.
45. Thus, in application of the set out legal principles referenced in the preceding paragraphs for filing a Constitutional Petition, the Honorable Court is fully satisfied that the Petitioners herein have dutifully



complied and fully met the threshold of reasonable precision in pleadings for instituting this Petition against the Respondents herein and pleading for the prayers sought. At the same time the Petitioners produced copies of their titles to the suit properties lending credence to the credibility of the claim and therefore the Petition.

**Whether the Constitutional Petition has any merit and, if affirmative, if the parties were entitled to the reliefs sought?**

46. From the analysis of the background information by the Petitioners, I am not in doubt as to who is the owner of the suit properties enumerated under paragraph 1 of the Petition – the Petitioners own the suit properties.
47. The Petitioners allege that on or about 17/12/2023 a group of surveyors and contractors visited, scoped and mapped their suit properties without prior notice with a view to constructing, building and / or opening up a road through the Petitioners’ properties situated on Ruiru Kiu Block 2 (Githunguri Ranching).
48. That despite the lack of prior notice, lack of public participation and lack of just compensation of the Petitioners or provision for adequate time for those living within the said properties to vacate, the project is currently ongoing.
49. It is the Petitioners’ contention that the project is being undertaken by agents, officers and/or employees of Cretum Properties Limited, the 4<sup>th</sup> Respondent who has trespassed on the suit properties using a wide range of paving and road construction equipment to level the road. This without the Petitioners’ consent or regard to their rights, interests or development.
50. Before entering the Petitioners suit properties, the Respondents herein never consulted the Petitioners previously before starting the leveling work that would lead to construction of the road cutting through the suit properties with the sole objective of dispossessing and taking away the suit properties from the Petitioners.
51. It is trite that under Article 40 of the Constitution, the Petitioners have the right to property, which right includes the use of the suit property. Article 40 of the Constitution provides as follows:

“ 40.

- (1) Subject to Article 65, every person has the right, either individually or in association with others, to acquire and own property—
  - (a) of any description; and
  - (b) in any part of Kenya.
- (2) Parliament shall not enact a law that permits the State or any person—
  - (a) to arbitrarily deprive a person of property of any description or of any interest in, or right over, any property of any description; or
  - (b) to limit, or in any way restrict the enjoyment of any right under this Article on the basis of any of the grounds specified or contemplated in Article 27 (4).



- (3) The State shall not deprive a person of property of any description, or of any interest in, or right over, property of any description, unless the deprivation—
  - (a) results from an acquisition of land or an interest in land or a conversion of an interest in land, or title to land, in accordance with Chapter Five; or
  - (b) is for a public purpose or in the public interest and is carried out in accordance with this Constitution and any Act of Parliament that—
    - (i) requires prompt payment in full, of just compensation to the person; and
    - (ii) allows any person who has an interest in, or right over, that property a right of access to a Court of law.
- (4) Provision may be made for compensation to be paid to occupants in good faith of land acquired under Clause (3) who may not hold title to the land.
- (5) The State shall support, promote and protect the intellectual property rights of the people of Kenya.
- (6) The rights under this Article do not extend to any property that has been found to have been unlawfully acquired.”

52. The Respondents did not file any responses meaning the Petitioners claim is uncontroverted. Legally speaking, the Land Act 2012 under the provisions of Sections 107 to 133 makes provision as to how compulsory acquisition of land is to be executed. The Respondents did not invoke the provisions of Section 107 of the Land Act to signify their intention to compulsorily acquire the land they required to construct the road. If the Respondents had intended to compulsorily acquire the land, they should have followed the due process.

53. Section 107(1) of the Land Act provides:-

“(1) Whenever the National or County Government is satisfied that it may be necessary to acquire some particulars land under Section 110, the respective Cabinet Secretary or the County Executive Committee Member shall submit a request for acquisition of land to the commission to acquire the land on its behalf.”

54. Section 110(1) of the Land Act provides:-

“(1) Land may be acquired compulsorily under this part if the commission certifies, in writing, that the land is required for public purposes or in the public interest as related to and necessary for fulfillment of the stated public purpose.”

55. My view is that it is thus clear that if the Government required a public road to be created cutting across the Petitioners’ land the Government ought to have invoked the provision of Section 107 (1) of the Land Act to set in motion the process of compulsory acquisition of the land. They did not do



so but arbitrary went ahead and began the process of leveling the Petitioners property with a view to creating the road and in fact started the beaconing process which as per the Petition some properties were affected.

56. The Petitioners had a right and were entitled to protest the invasion of their land. The Petitioner's property rights were violated and there was a clear breach of Article 40 of the Constitution. The Petitioners cannot therefore be remediless and this matter is not "fait accompli".
57. Under Article 23(3)(e) the Court in enforcement of the Bill of Rights has power to make an order for compensation where breach has been established. In the instant Petition, I am satisfied the Petitioners' constitutional rights relating to protection of property were violated and their land was appropriated without due process of the law. The Petitioners were traumatized at the trespass on their suit properties without notice, without prior engagement and without public participation when the Respondents initiated the process of appropriation of the land to construct a road and did not stop until the Court issued an interlocutory order.
58. If due process was followed and it was found the land was required for a public purpose, the Petitioners would have been compensated for the portion of the land deemed necessary for the construction of the road.
59. The law is clear that while the State may acquire private property for public purposes, such acquisition must strictly adhere to constitutional and statutory safeguards. In *Kenya Ports Authority v The National Lands Commission & 4 Others* [2023] KECA 870 (KLR), the Court of Appeal detailed the process for compulsory acquisition as follows:

“ 42. The power of the state to acquire land is a creation of Statute. The statutory framework for compulsory acquisition is founded under Part VIII of the Land Act, No 6 of 2012. Section 107 of the Land Act provides:

Preliminary notice

1. Whenever the national or county government is satisfied that it may be necessary to acquire some particular land under section 110, the respective Cabinet Secretary or the County Executive Committee Member shall submit a request for acquisition of land to the Commission to acquire the land on its behalf.
2. The Commission shall prescribe a criteria and guidelines to be adhered to by the acquiring authorities in the acquisition of land.
3. ...
4. If the Commission establishes that the request under subsection (1) meets the requirements prescribed under subsection (2) and Article 40(3) of the Constitution, the Commission shall—
  - a. cause the affected land to be mapped out and valued by the Commission using the valuation criteria set out under this Act; and
  - b. establish that the acquiring authority has identified the number and maintains a register of persons in actual occupation of the land, confirming for each such occupation how much time they have



been in uninterrupted occupation or ownership of interest in the land before the date of the request for acquisition of the land, and the improvements thereon.

5. Upon approval of a request under subsection (1), the Commission shall publish a notice to that effect in the Gazette and the county Gazette, and shall deliver a copy of the notice to the Registrar and every person who appears to the Commission to be interested in the land.
43. The Lands Act Part VIII is very elaborate on the process that should be undertaken in acquiring land. It is clear from Section 107 of the Lands Act that there is a preliminary process which has two stages. The National Land Commission, the 2nd Respondent herein [hereinafter NLC], is ordinarily prompted by the national or county government through the Cabinet Secretary or County Executive member, respectively... The land must be acquired for a public purpose or in public interest as dictated by Article 40(3) of the *Constitution*. The NLC needed to be satisfied in these respects by undertaking the necessary diligent inquiries including interviewing the body intending to acquire the property. Under Sections 107 and 110 of the *Land Act*, the NLC must then publish in the gazette a notice of the intention to acquire the land. The notice is also delivered to the Registrar as well as every person who appears to have an interest in the land...
46. Section 112 of the *Land Act* requires the involvement of the owner of the land considered for acquisition, and the discussion or inquiry carried out will include receipt of a claim for compensation by the landowner. On completion of the inquiry, the NLC is required to make a separate award of compensation for every person determined to be interested in the land and then offers compensation ...”
60. In this case, it is undisputed that the Respondents entered the suit properties, and started leveling of the land for road construction without initiating the mandatory acquisition process under Part VIII of the *Land Act*. There was no notice of intent to acquire, no inquiry, no participation by the Petitioners, no valuation, no award, and no compensation. At the very least, no such evidence was presented before this Court. Under these circumstances, I find that the Respondents’ actions or inactions amount to a deprivation of property contrary to Article 40(3) and Article 60(1)(b) of the *Constitution*. They must compensate the Petitioners for their properties if they need to acquire the suit properties.
61. Additionally, the Honorable Court finds that actions by the Respondents amounted to trespass and hence were criminal in nature and actionable.
62. Trespass is defined under the provision of Section 3 (1) of *Trespass Act*, Cap 294 as follows:-

“Any person who without reasonable excuse enters, is or remains upon or erects any structure on or cultivates or grazes stock or permits stock to be on private land without the consent of the occupier therefore shall be guilty of an offence.”



63. From the book “Clerk & Lindsell on Torts 12<sup>th</sup> Edition” Paragraph 113, defines trespass as follows:
- “Trespass to land consists in any unjustifiable infusion by one person or property upon land in the possession of another.”
64. Thus, trespass is an intrusion by a person into the land of another, especially wrongful entry on another’s real property who is in possession and ownership. While ‘Continuous trespass’ is tress in the nature of permanent invasion on another’s rights, such as a sign that overhangs another’s property.
65. Further according to Clerk & Lindsell on Torts, 19<sup>th</sup> Edition the writer states at Paragraphs 9 - 13:-
- “Proof of ownership is Prima Facie of possession, unless there is evidence that another person is in possession but if there is a dispute as to which of the two persons are in possession the presumption is that the person holding title to land is in possession.”
66. It now well established that trespass to land is actionable per se (without proof of any damage). See the case of Park Towers Limited -Versus - John Mithamo Njika & 7 Others (2014) eKLR where J.M Mutungi J. stated:-
- “I agree with the Learned Judges that where trespass is proved a party need not prove that he suffered any specific damage or loss to be awarded damages. The Court in such circumstances is under a duty to assess the damages awardable depending on the unique facts and circumstances of each case ....”
67. Since the Petition is undefended, the Respondents have not demonstrated any lawful or better entitlement/right to the suit properties enumerated at paragraph 1 of the Petition that superseded the Petitioners’ interest over the suit property. For these reasons, therefore, the Petitioners are entitled to damages and reliefs sought, since the law provided that where trespass was proved, a party need not prove that he/she suffered any specific damage or loss to be awarded damages. In such circumstances, the Court is persuaded to grant the awards sought by the Petitioners.
68. Therefore, the Court finds that the Respondents are fully liable to pay damages for the trespass into the Petitioner’s suit property.

#### **Who will bear the Costs of the Petition?**

69. On the issue of the costs of the Petition, the provisions of Section 27 (1) of the *Civil Procedure Act*, Cap. 21 holds that Costs follow events. The issue of Costs is the discretion of Courts. In the case of Reids Hewett & Company vs Joseph AIR 1918 cal. 717” and Myres vs Defries (1880) 5 Ex. D. 180, the House of the Lords noted:-
- “The expression “Costs shall follow the events” means that the party who, on the whole succeeds in the action gets the general costs of the action, but where the action involves separate issues, whether arising under different causes of action or under one cause of action, the word ‘event’ should be read distributive and the costs of any particular issue should go to the party who succeeds upon it .....”
70. From these provisions of the law, the Petitioners have succeeded in their case. For that very fundamental reason, therefore, the costs of this suit will be made to the Petitioners by the Respondents herein jointly and severally.



**Disposition**

71. I allow the Petition dated 27/12/2023 and specifically make these Orders:-

- a. A declaration is hereby issued that there was no proper, regular and/or lawful compulsory acquisition of the Petitioners’ respective suit properties as contemplated under Article 40 (3) of the Constitution and Part VIII of the Land Act, prior to and for purposes of the project;
- b. A declaration is hereby issued that the continued construction of a road across the Petitioners’ (the project), is irregular, unlawful, unconstitutional and a gross violation of the Petitioners’ property rights as set out under Article 40 of the Constitution and the relevant Statutes, as well as the Petitioners’ rights to Fair Administrative Action as set out under Article 47 of the Constitution and the Fair Administrative Action Act;
- c. A declaration be and is hereby issued that the opaque and secretive manner with which the project was conceptualized, initiated and is being undertaken, contravenes the values and principles of governance as laid out under Article 10 of the Constitution, and in particular, on transparency and accountability;
- d. A declaration is hereby made that the failure to disclose details of the projects, to wit, the project name, purpose, measurements, owner, contractor(s), manager etc, amounts to a gross violation of the Petitioners’ rights under Article 35 of the Constitution to access such information;
- e. An order of Prohibition, is issued prohibiting any further construction of a road on the suit properties forthwith;
- f. An order of mandamus is issued directing and/or compelling the 1<sup>st</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup> Respondents and Interested Party herein, whether by themselves, their agents, principals, servants, employees or assigns, to withdraw from the suit properties in entirety, together with any such paving and road construction equipment being used in the project;
- g. A permanent injunction restraining the Respondents and the Interested Party, whether by themselves, their agents, employees, servants or assigns from further trespassing on the suit properties is hereby issued;
- h. An award for damages of Kesh 1,500,000 for each Petitioner is made to be paid by all the Respondents jointly and severally;
- i. Costs of the Petition is awarded to the Petitioners.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT THIKA THROUGH MICROSOFT TEAMS ON THIS 29<sup>TH</sup> DAY OF JANUARY, 2026.**

.....

**MOGENI J**

**JUDGE**

In the presence of:-

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Mr. Melita – Court Assistant

