



**Patel & another v Kenya National Highway Authority (Environment and Land  
Petition 3 of 2022) [2026] KEELC 901 (KLR) (29 January 2026) (Judgment)**

Neutral citation: [2026] KEELC 901 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MALINDI  
ENVIRONMENT AND LAND PETITION 3 OF 2022  
FM NJOROGE, J  
JANUARY 29, 2026**

**BETWEEN**

**DARSHANABEN DHARAMENDRA KUMAR PATEL &  
ANOTHER ..... PETITIONER**

**AND**

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

**JUDGMENT**

1. The petitioners filed the petition dated 14<sup>th</sup> January, 2021 on 25<sup>th</sup> January 2022. Resort the following orders:
  - a. A Declaration that the petitioners are the rightful, legal and beneficial owners of Plot Number CR 28954 being Subdivision Number 2831/III/MN Mainland North Mombasa measuring approximately 0.744 hectares;
  - b. A Declaration that the petitioners' 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 respondents herein;
  - c. A declaration that the respondent's threat of demolition of the premises erected on LR NO CR 28954 being subdivision number 2381/III/MN mainland north Mombasa is illegal unlawful, wrongful and an infringement and violation of the petitioner's constitutional rights to property;
  - d. A conservatory order restraining, prohibiting, and stopping the respondents jointly and severally, their agents, officers, and any persons acting under them any structures, offering for sale, selling, disposing of charging, subdividing, dealing, alienating, occupying, managing, letting, or otherwise using residing and remaining or representing themselves as the registered



- owners of the property or in any way whatsoever from interfering with the petitioners proprietary rights including the right to quiet position and enjoyment over the suit premise;
- e. That this court do Grant any other appropriate relief and do make such further or other orders and to give such further or other directions as this court may consider appropriate for the purpose of enforcing or securing the enforcement of the provisions of articles 1(1) (2)(3)(a),(b) (4)(b), 2(4) 6(1) (2), 10, 165 (3)(d) (ii) (iii) 238, 244, to 258(1) and the 259(1) of *the constitution* and any other articles of *the constitution* in the relation to the petitioner in this petition;
  - f. Costs of this petition
2. The petition is supported by a sworn verifying affidavit of the 1<sup>st</sup> petitioner also dated 14<sup>th</sup> January 2021.
  3. The grounds upon which the petition is based are as follows: the petitioners are co- proprietors of all that property known as CR 28954 being Subdivision Number 2831 situated in Mtwapa within Kilifi County, measuring 0.0744 ha (hereinafter also referred to as “the suit property”. Sometime in 2021, they received a notice dated 21<sup>st</sup> October, 2020 from the respondent alleging that the suit property had encroached onto a road reserve and that they should remove or demolish the offending structures within the specified period failing which the respondent would take steps to demolish the same. The petitioners deny that the suit property encroaches onto a road reserve. They maintain that the developments carried out on the suit property are within the boundaries of the suit property and were carried out after due authorization. They also state that there is a tenant on the suit premises carrying on a petrol station business which is still operational to date. They maintain that their rights in the suit premises can only be extinguished legally and procedurally and that the respondent has not followed the proper legal process. They also aver that the respondent has not obtained a court order sanctioning its purported dealings with the property, and that its threat to demolish the developments on the suit premises is unlawful. They claim that the respondent has violated Article 40 (3) and Article 47 of *the Constitution*.

### **The Response**

4. The respondent filed the sworn affidavits of Daniel Mbuteti dated 22<sup>nd</sup> March 2022 and 27<sup>th</sup> March 2023 in response to the petition. The deponent admitted that the respondent is currently constructing the Nyali-Mtwapa Kwa Kadzengo Section of a road known as E7 and that the Plot Number 2831 is located along that road. It is stated that the Respondent requires to acquire 0.0058 hectares of the said parcel in order to facilitate the expansion of the road into a dual carriageway and that the acquisition will be conducted in accordance with the legal land acquisition process; that so far no gazettelement for land acquisition has been done in respect of Plot Number 2831, but the same is scheduled to be gazetted by the National Land Commission which is the body legally mandated to acquire land for public bodies. The deponent denied that it had claimed ownership of the suit premises or issued any demolition notices with regard to Plot Number 2831 and stated that the petition is premature as no clear dispute has arisen between the parties; that the notice dated 21<sup>st</sup> October, 2020 only intimates the intention to acquire the land and not to demolish any property. The respondent also stated that the petitioners have not provided any evidence to prove any violation or threat of violation of their rights under *the Constitution*.
5. In the further affidavit of 27<sup>th</sup> March, 2023, the respondent admitted instructing the National Land Commission to undertake the land acquisition with regard to the suit property for the purposes of road construction and that the National Land Commission gazetted the suit land, among other parcels, for compulsory acquisition on 26<sup>th</sup> May 2022; that all Project-affect Affected Persons (PAPs) who had proprietary claims or interest in the parcels of land identified for compulsory acquisition were



required to appear before the National Land Commission on diverse dates as per gazette notice. That the National Land Commission pursuant to Section 13 of the Land Act made good inquiry and determined the rightful owners and made awards as required under Section 113 of the Land Act 2012. That the respondent is awaiting the publication of the compensation award by the National Land Commission and the Compensation Schedule after which the petitioners shall be compensated in accordance with the law.

6. Owing to the fact that Mr. Mbuteti left employment with the respondent, Mr Michael Obop took up the matter as a witness and swore to the same information contained in the affidavits of Mr. Mbuteti as analyzed above.
7. The petition was heard by way of viva voce evidence. The 1<sup>st</sup> petitioner testified on 11<sup>th</sup> November, 2024. His evidence is that his manager at the petrol station informed him that the respondent's agents had marked his property. That was in 2017- 2018. He further stated that the respondent intended to expand the road abutting the suit property. He stated that he was not served with any notice from the respondent; that if the respondent carries out its intention, then his business of a petrol station would have to close down. He claimed that the respondent had encroached on the suit property and carried on its activities without notice; that he engaged Pimatech Surveyors to carry out an exercise regarding the land; that the land was listed in the gazette notice; that the activities of the respondent have affected half of the size of the petrol station. He stated that he requires to be compensated for the whole of the land and that he has no objection with giving up possession thereof to the respondent.
8. Upon cross-examination by Mr. Maruti, he admitted that no development is taking place on the suit property and that no notice has been given by KeNHA that they would demolish any structures on the property. He admitted that the National Land Commission has to be involved in matters of land acquisition if his land was to be taken and that he knew how much of the land was going to be appropriated; that he is aware that the National Land Commission would pay him compensation; that it was his desire that the entire plot be taken and not just a portion of it.
9. Upon re-examination by Ms Ombat, he admitted that the respondent has not conducted any activities on the property. However, he pointed out that he had obtained a stay order against KeNHA.
10. PW2 Mr Mwanyungu, the Surveyor testified and produced a report dated 5<sup>th</sup> September 2022. He stated that he was tasked with the exercise of establishment of the boundaries of Plot Number 2831 and to check for any encroachments. He stated that the property borders the new Mombasa-Malindi Highway, and at the back, it borders the old Mombasa Malindi road, that it has a boundary wall and it does not interfere with the highway. He stated by the new road encroaches on the suit property by a very small portion of 1.3 m.
11. Upon cross-examination by Mr Maruti, he admitted the there was no construction going on in the suit property nor any interference by the respondent and that the wall has been erected by the owner of the suit property who has built into the road by 1.3 m. He stated that he had not informed the owner to remove the encroachment. He stated that there was nothing alarming on the ground.
12. Upon re-examination by Ms Ombat, he stated that he had seen a yellow mark in the middle of the property beyond the 1.3 m which had encroached onto the road. The mark was on the boundary wall. He did not know who affixed that mark. According to him, the government is entitled to just 1.3 m which the petitioners have encroached on, and for the rest if it is to be acquired then compensation would have to be paid the petitioners.
13. PW3 Rashid Harun Shake testified for the petitioners and produced the valuation report as Exhibit 4. When he visited the land there was ongoing construction but there was no construction on the



property. On which normal operations were proceeding without any interference by the respondent. According to him, he could see the extent that was to be affected by the land acquisition process. In his opinion, the entire business is affected. Therefore, he did not restrict his value on only the affected area of the land.

14. What is opinion upon cross-examination by Ms Ombati that if the land was acquired as proposed by the respondent, the business could not operate normally.

### **Respondent's Evidence**

15. DW1 Michael Obop testified for the respondent and adopted the contents of the replying affidavit and further affidavit he had sworn in the matter. His evidence is that the suit land had been identified for acquisition vide Gazette Notice 6737 dated 26 May 2022. NLC went to the ground, made inquiries and a report of the NLC is being awaited. According to him there was no construction of any road on the suit property as at the time of the hearing.
16. Upon cross-examination by Ms Ombati, he stated that gazettelement is sufficient legal notification of the intention of the respondent. That when the report comes from the National Land Commission, compensation funds are then send to the National Land Commission to be paid to the land owners whose plots are affected. According to him the yellow marks can be placed on any property merely to direct the National Land Commission to the property intended to be acquired, and that does not amount to an encroachment. Only 0.058 hectares of the petitioner's land is affected.
17. Upon re-examination by Mr. Maruti, he emphasized that the marks placed by the respondent on any property to be acquired do not amount to an encroachment and they serve as sufficient notice to the land owner as well as the National Land Commission on the extent of the land intended to be acquired.
18. No submissions were filed in the present case on the CTS or in the physical file by the petitioner.
19. The respondent however filed submissions dated 14<sup>th</sup> October, 2025. In his submissions counsel for the respondent identified the following as the issues for determination:
  - a. Whether the petitioner's rights have been violated as alleged;
  - b. Whether the court can issue the orders and or prayers not specifically pleaded in the petition;
  - c. Whether the petitioners are entitled to the orders sought.
20. Citing the well-known Anarita Karimi Njeru and Mumo Matemu cases counsel submitted that constitutional violations must be pleaded with a reasonable degree of precision, and it is not sufficient to cite the provisions of *the Constitution* without clarity on how those have been violated. Counsel relied on the Site Report of the Deputy Registrar which stated that the area of gazetted land was 0.0058 acres; that at the time of the site visit, the petrol station was still in operation and they were no road construction activities on the suit property. The respondent is awaiting completion of the acquisition process so as to take possession of the portion acquired for road construction; that it being a normal land acquisition process the petitioners have failed to pinpoint with precision how their rights have been violated; that no actions on the part of the respondent threatening to interfere with the suit property have been pleaded; that on cross-examination, the petitioner informed the court that the respondent had not issued any notice of demolition in terms of Section 49 of the *Kenya Roads Act*; that the evidence given by the petitioner does not satisfy the requirements of Section 107 of the *Evidence Act* Cap 80 of the Laws of Kenya. That NLC has mandate to acquire land on behalf of the government; that the role of the respondent is only to notify the National Land Commission of the



need to acquire land; that the petitioners have not pleaded that the acquisition was unlawful or that it was not in compliance with the provisions of the law.

21. Regarding the second issue, it was submitted that the petitioner had in cross-examination admitted to the acquisition of the suit property. The Petitioners' only concern was that the remainder of the suit property was of no economic value to him. That the prayer for payment was introduced when the petitioner testified in court and referred to the various documents filed. That no sums were specifically pleaded in the petition and the court cannot make an award that is not specifically pleaded. The Case of Prisca Onayo Nande (Deceased) 2020 KEHC 6553 KLR was relied on for the proposition that a party is bound by its pleadings and the court can only make a decision on a matter based on the pleadings before it. Further, that the petitioners will be finally compensated in accordance with the law.
22. Regarding the third issue, it was submitted that the petitioners are not entitled to the prayers sought and the petition should be dismissed with costs.

### **Analysis And Determination**

23. The claim by the petitioner which forms the basis of the present petition is that the respondent served upon them a notice dated 21<sup>st</sup> October 2020 alleging that the suit property known CR 28954 (Subdivision Number 2831) situated in Mtwapa within Kilifi County had encroached onto a road reserve and that they should remove or demolish the offending structures within the specified period failing which the respondent would take steps to demolish the same. The petitioners deny that claim and aver that the developments carried out on the suit property are within the boundaries of the suit property. They maintain that their rights in the suit premises can only be extinguished legally and procedurally, and that the respondent has not followed the proper legal process, and that its purported dealings with the suit property, and means the threat to demolish the developments on the suit premises, is unlawful. They claim that the respondent has violated Article 40 (3) and Article 47 of *the Constitution*.
24. The issue that arises for determination is therefore whether the respondent has violated Article 40 (3) and Article 47 of *the Constitution*. The answer to that question lies in the evidence that the parties have brought to this court.
25. There is no controversy regarding the claim that the land in question is owned by the petitioners, or that it indeed abuts the Mombasa-Malindi road. secondly it is not in doubt that the respondent, through the National Land Commission issued a notice, Gazette Notice No 8482 of 21/10/2020. That notice was directed at many individuals and entities who own plots along the Mombasa Malindi road. It states as follows:

“The *Land Act*

No 6 Of 2012

Dualling Of Nyali Bbridge –mtwapa –kwa Kadzengo –kilifi (a7) Road Section

Intention To Acquire

In Pursuance of that *Land Act* 2012 part VIII, the national land commission, on behalf of Kenya National Highways Authority (KeNHA), gives notice that the National Government intends to acquire the following parcels of land for the dualling of Nyali Bridge –Mtwapa –Kwa Kadzengo –Kilifi (A107) Road project in Mombasa and Kilifi Counties.

Schedule



Parcel No. Registered Owner Acquired Area(Ha)

.....

.....

Plan of the affected land may be inspected during office hours at the office of the National Land Commission, Ardhi House 3<sup>rd</sup> Floor Room 305 Mombasa and Kilifi County Co-Ordinators' Office.

Dated the 16<sup>th</sup> October 2020.”

26. That is the offending notice, exhibited as “DKP-3” at paragraph 8 of the supporting affidavit to the petition, that has provoked the present suit. Paragraph 8 reads as follows:

“That sometimes at the end of last month I received a notice dated the 21<sup>st</sup> October 2020 from the respondent intimating that the suit property had encroached onto a road reserve and they are requiring that the same be removed/demolished by the applicant within the specified period failing which the respondent would take steps to demolish the same or such part as was allegedly encroaching onto the road reserve.”

27. The contents of that paragraph are similar to the contents of paragraph 11 of the petition. This court has perused and ascertained that there is no other notice relied on in the record.

28. The respondent's response to the claims was initially that gazettment of land had not been done, and that it was scheduled to be done by the NLC in the future, and that once that happens, the acquisition of the suit land would be as prescribed by the law; that the gazette notice dated 21/10/2020 is a notice of intention to acquire and not a notice of demolition, and that in any event the suit land is not one of those listed in that notice as affected lands. This was stated in the first replying affidavit.

29. In the supplementary replying affidavit, it is averred that subsequent to the first notice the National Land Commission issued another Gazette Notice No 6237, dated 26/5/2022, gazetting the suit land, among others, for compulsory acquisition. It was stated in that supplementary affidavit that all Project-affect Affected Persons (PAPs) who had proprietary claims or interest in the parcels of land identified for compulsory acquisition were required to appear before the National Land Commission on diverse dates as per the gazette notice. That the National Land Commission pursuant to Section 113 of the Land Act made a full inquiry and determined the rightful owners and made awards as required under Section 113 of the Land Act 2012; that the respondent is awaiting the publication of the awards of compensation as assessed by the National Land Commission and the compensation schedule after which the petitioners shall be compensated in accordance with the law. This court has perused that notice in detail. Under the Addendum section, at page 3300 of that Notice, the suit property is listed as item no 5 from the top.

30. It reads as follows:

“The Land Act

No 6 Of 2012

Dualling Of Nyalı Bridge –mtwapa –kwa Kadzengo –kilifi (a7) Road Section

Deletion, Corrigendum And Addendum

In Pursuance of the Land Act 2012 part VIII, and further to Gazette Notice Nos 8482 and 10259 of 2020, 14011 and 14012 of 2021, the National Land Commission, on



behalf of Kenya National Highways Authority (KeNHA), gives notice that the National Government intends to acquire the following parcels of land for the dualling of Nyali Bridge –Mtwapa –Kwa Kadzengo –Kilifi (A107) Road project in Mombasa and Kilifi Counties.

Schedule

Parcel No. Registered Owner Acquired Area(Ha)

MN/III/2831 ..... 0.0058 HA.”

31. In view of the information analysed herein above, it is clear that the petitioner’s land was not included in the first notice. It was not open to the petitioner to conclude that due to that omission, and even before any overt action was undertaken against it by the respondent, the petitioner’s land was at risk of being appropriated without notice. I think all that happened is that the petitioner’s land was erroneously omitted from the first list and was added to the second list in the gazette notice under the corrigenda as seen herein above. I have not seen anything wrong said to have been done by the respondent with regard to the petitioner’s land under the first notice. The respondent is not even the body that issued the notice. There is no further affidavit filed by the petitioner to counter the evidence given in the respondent’s further affidavit to the effect that the National Land Commission has conducted hearings and is in the process of assessing compensation for the affected persons. This must be deemed to include the petitioner as its land has been listed in the last Gazette Notice No 6237 Of 27<sup>th</sup> May 2022, a date 5 months after the present suit was filed. The respondent’s evidence that the National Land Commission conducted hearings and is in the process of assessing compensation due to the project affected persons still stands. This court thus finds that before Gazette Notice No 6237 Of 27<sup>th</sup> May 2022 was issued the petitioner had no reason to complain, and all the avenues of redress were available to it in the event that the respondent as much as entered its land without any notice for the purpose of demolition and road construction thereon. On cross-examination, the petitioner informed the court that the respondent had not issued any notice of demolition in terms of Section 49 of the *Kenya Roads Act*. In the stated circumstances, no claim of violation of even one right or freedom under Articles 40 and 47 of *the Constitution* could be validly premised on Gazette Notice No 8482 of 21/10/2020. Further, it is the view that the petitioners will be finally compensated in accordance with the law pursuant to the inquiries and conclusions made by the National Land Commission after Gazette Notice No 8482 of 21/10/2020 was issued. Dissatisfaction with the decision of the National Land Commission as to Compensation should be dealt with through the established channels after the award is made to the petitioner. For now, this court has no role in the matter.
32. The upshot of the foregoing discourse is that the petition dated 14<sup>th</sup> January, 2021 lacks merit and it is hereby dismissed. Having considered the circumstances surrounding the petition, I order that each party shall bear their own costs.

It is so ordered.

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

**MWANGI NJOROGE,**

**JUDGE, ELC, MALINDI.**

