



Vescon Properties Limited v Kenya National Highway Authority (Environment and Land Petition 15 of 2022) [2026] KEELC 812 (KLR) (29 January 2026) (Judgment)

Neutral citation: [2026] KEELC 812 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT AND LAND PETITION 15 OF 2022
FM NJOROGE, J
JANUARY 29, 2026**

BETWEEN

VESCON PROPERTIES LIMITED PETITIONER

AND

KENYA NATIONAL HIGHWAY AUTHORITY RESPONDENT

JUDGMENT

The Petition

1. This petition concerns portions of land formerly part of Kilifi/Mtwapa/407, which now said to have undergone subdivision and subsequent consolidation of some of the resultant parcels to form Parcel No 6107, which was later subdivided to create parcel numbers Kilifi/Mtwapa/6151, 6152, 6153, 6154, 6155 and 6156 measuring approximately 0.039 hectares each (hereinafter also referred to as "the suit lands".)
2. The petitioner filed the petition dated 17th May, 2022 seeking the following orders:
 - a. A Declaration that the petitioner is the rightful legal and beneficial owner of land known as plot number Kilifi/Mtwapa/407 and compassing subdivisions numbers 6151, 6152, 6153, 6154, 6155 and 6156 measuring approximately 0.039 hectares each;
 - b. A declaration that a petitioner's fundamental rights and freedoms as enshrined under Articles 40, 47, 48, 60, of *the Constitution* of Kenya 2010, has been contravened and infringed upon by the respondents herein;
 - c. Declaration that respondent's intentions of demolition of the premises erected on the suit premises is illegal and lawful wrongful and an infringement and violation of the petitioner's Constitutional rights to property;



- d. A conservatory order restraining prohibiting and stopping the respondents joint tree and severally, their agents, officers and any person acting under them from entering upon or trespassing, encroaching, demolishing, or in any way whatsoever from interfering with the petitioner's proprietary rights including the right to quiet possession and enjoyment over the suit premises;
 - 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 and forcing or securing the enforcement of the provisions of article 1(1) (2) (3)(a), (b) (4)(b) 2 (4) 6(1)(2), 10, 165 (3)(d)(ii) (iii), 238,244, 258(1) and 259(1)(3) of the Constitution and any other articles of the Constitution in relation to the petitioner in this petition;
 - f. Costs of this petition.
3. The petitioner claims that it is the legal and beneficial owner of the parcel known as Kilifi/Mtwapa/407 which was subdivided into 6 subplots, Kilifi/Mtwapa/6151, 6152, 6153, 6154, 6155 and 6156 to which title deeds were issued on 24th October 2018. Sometime in March 2018, the respondent entered the suit properties and, without following the due process or issuing any notice whatsoever, demolished properties erected thereon alleging that the same were encroaching onto the road reserve. A subsequent survey commissioned by the petitioner was carried out by Messrs Celine Consultants Limited and it confirmed that the suit properties had encroached on the road reserve by 5.1 m on the southern boundary but the respondent had demolished property beyond that stretch up to a distance of 11.8 m. At the same time the respondent demolished 5.1 m of the original boundary on the southern side whereas the encroachment was 10.7 m.
 4. Following those occurrences, the petitioner sought the respondent to conduct the survey process and registered reach the appropriate boundary beacons to avoid further demolitions and consequently a survey report dated 1st August, 2018 was made by the respondent confirming that a survey process on the properties was carried out and the beacons were re-established. The petitioner avers that the boundary beacons as re-established by the respondent do not encroach on the road reserve. However, in the year 2021 the petitioner got information that the construction of the Mombasa-Mtwapa-Malindi Highway would resume and was apprehensive that the respondent would interfere with the petitioner's quiet possession of the suit premises without affording the petitioner an opportunity for fair and just hearing. The petitioner avers that the suit properties' boundaries and structures erected thereon do not encroach on any road reserve; that the respondent has not informed the petitioner of its rights as envisioned under compulsory acquisition, and that omission is adverse to the petitioner's ownership of the suit property and contrary to the rules of fair hearing and just administrative process granted by Article 47 of the Constitution; that further, the respondent has not issued any gazette notice in respect of the intended demolition or obtained any order of Court sanctioning any dealing and/or demolition of the petitioner's premises by the respondent. The petitioner avers that it right to acquire an own property without arbitrarily being deprived of the same as guaranteed by Article 40(3) of the Constitution has been and will be contravened if they intended unlawful and illegal demolition is effected, hence the petition for inter alia injunctive orders.
 5. The petition is supported by the sworn affidavit of Halai Praful Velji Shamji which extensively reiterates the matters in the petition.
 6. The respondent filed the replying affidavit of Daniel Mbuteti, Senior Surveyor with respondent, dated 26th August, 2022 in opposition to the petition where in the deponent stated as follows: that the mandate of construction and operation of the national trunk routes falls on the respondent, the road



next to the parcels is being dualled; that the suit lands bear common boundary with the road under construction; that when plot number 407 was subdivided into several subplots, a 2.5 m wide strip of land was surrendered for road expansion for an access road to the sub plots; that in 2018 a land consolidation survey for the six plots was carried out to create land parcel Kilifi/Mtwapa/6107, which was subsequently subdivided into parcel numbers 6151 to 6156. Upon that subdivision, the petitioner surrendered a 2.5 m wide strip for road widening and further surrendered a 6 m wide strip for the purpose of creating an access road to the subplots; that however, despite the recorded surrender on paper, surrender on the ground was not performed and therefore the existing road reserve on the ground which ought to be more than 120 ft had been made narrower by the existence of the petitioner's perimeter wall which required to be removed to pay the way for the construction works.

7. The deponent denies that the respondent demolished properties erected on the suit land without notice and maintained that the owners of the properties encroaching on the road reserve were sensitized on the need to remove them. In particular, the petitioner was notified in the year 2018 that the suit properties were encroaching on the road reserve and that there was need to realign and to relocate its wall to be in line with existing road reserve boundary; that the Petitioner has confirmed that its property was encroaching on the road reserved by 5.1 m. The petitioner should not have utilized the property forming part of the road reserve. The deponent being a surveyor undertook a survey and established that the perimeter wall was encroaching onto the 120 ft wide road reserve by approximately 1.3 m; that despite the petitioner and the respondent agreeing in good faith that the petitioner would realign its wall, the petitioner went ahead and build a perimeter wall within the road reserve; that the respondent does not seek to utilize in the land beyond the defined road reserve for the construction of the road and will not interfere with the entire suit property as alleged, and the apprehension by the petitioner that the respondent shall demolish the other developments on the suit property is misplaced; that the dispute should have been referred to the Land Registrar Kilifi County for determination at the first instant pursuant to Section 18 and 19 of the [Land Registration Act](#); that the petition is imprecise and does not disclose any Constitutional issues for determination. Territorial jurisdiction of the court was doubted by the deponent but finally the point was not pursued and this matter was heard and determined at Malindi where there had been filed.
8. Following the retirement of Daniel Mbuteti from the respondent corporation Mr Michael Obop, Assistant Director, Land Assets in the Respondent corporation and who is a Surveyor, took his place in this litigation and filed an affidavit dated 27th January 2025 whose contents are similar to those in Mbuteti's affidavit analyzed above.
9. The petition was disposed by way of viva voce evidence.
10. Praful Velji Shamji Halai testified for the petitioner and adopted his witness statement dated 18th May, 2022 as well as the supporting affidavit and all its annexures as his evidence-and-chief and also produced documents. His evidence followed closely the contents of the petition. According to him, no issue of encroachment on the road reserve had ever been raised before. The suit property emanated from subdivision of plot Kilifi/Mtwapa/407. The respondent marked the property for purposes which the petitioner did not know. The properties never been gazetted. In 2018 the respondent came to demolish the perimeter wall.
11. Upon cross-examination by Mr Maruti, the witness admitted that when they were acquiring the property in 2018, they did not establish the extent of the road reserve or the class of road that it bordered. In 2018 the respondent demolished the boundary wall which according to the witness was located away from the tarmac and was not encroaching on the road reserve. No notice was given to the petitioner to remove the wall prior to demolition. Beacons were pointed out to the witness in 2018 and they were new. Thereafter the petitioner constructed a new wall according to the respondent's advice.



- The witness stated that there was no evidence of road construction on the property by 2022 when this suit was filed. After the construction of the wall, the respondent did not interfere any further with the property.
12. When shown plaintiff Exh 2, he admitted that that was a surrender of 0.050 hectares emanating from the petitioners subdivision of the Land and admitted there was a portion that was taken by the respondent after the wall was demolished. When further cross-examined by Mr Maruti, he admitted that there is a space marked “b” on the map, which is 6 m wide by 100 m long, which arose from the subdivision of the suit land. He stated that however, there is no construction on the 6m wide strip. He also admitted that upon the Deputy Registrar’s visit, the parties were able establish the boundary but maintained that the petitioner deserves compensation for the portion taken by the respondent.
 13. Upon re-examination by Ms Ombat, PW1 stated that the portion claimed by the respondent to be an access road was within the petitioner’s property, that the respondent made markings on the new wall which markings are still present as though the respondent intends to further encroach onto the property.
 14. PW2 gave oral testimony and adopted his report dated 18th September, 2022. His task was to show the ground position of the property. On his visit to the site he was shown the ground position. The property about the new Mombasa-Malindi road. The old wall and the new wall are 6.8 m apart on one side and 4 m apart on the other end. According to him the plot does not encroach into the road reserve. The remnants of the old wall which was demolished due to encroachment are still visible. The new wall is not on the road reserve. The property is accessed through the back hence there is no interference with the road reserve. According to him, the government is entitled to the existing boundary. There were no markings on the property at the time of his visit.
 15. Upon cross-examination by Mr Maruti, he stated that there was an encroachment of 6.8 m before the demolition. The present boundary between the road reserve and the property is the fixed boundary. PW2 got plans that enabled him to carry out his task from the Director of Surveys. He established the width of the road to be 36.59 m. When shown page 6 of the replying affidavit, he identified a surrendered portion of land thereon and admitted that the surrendered strip had reverted back to the government and it is not for the owner’s common use. When shown Exhibit 3 admitted that it showed that the strip marked beside the six plots and beside the road had been surveyed and confirmed for use as an access road. The beacons were notable on the side of the strip close to the plots where the new plot boundaries were established after subdivision. According to him, there was no construction within the suit property and there was nothing that the respondent was undertaking as could be alarming.
 16. Upon re-examination by Ms Ombat, his stated that general boundaries are defined by features while fixed boundaries are defined by beacons; that it is the proprietor of land who undertakes the surrender. The 6m. wide strip is outside the suit property.
 17. PW3, a Valuer, gave oral evidence. His task was to value the part affected by the expansion of the Mombasa- Malindi highway by the operations of the respondent; that the area is 2.5 m wide along a 122.4 m stretch. According to him, KeNHA required the surrender of that stretch amounting to a portion of 306.23 m. The total land lost is 0.0 323 hectares for all the six plots. He considered 15% disturbance allowance as per statute. The total of value of the six plots is 27,000,000/-. The value of the portion affected is 4,500,000/-. When the value of the affected structures is added, it comes to Kenya shillings 9,545,000/-. At the time of his visit, there was an existing wall and a gate running parallel to the road reserve. After the area was affected, the petitioner demolished the whole wall facility to the expansion of the Mombasa-Malindi highway. By the time of the visit, the 2.5 m wide by 122.49m long



strip had been surrendered and a new wall had already been erected and cost incurred. According to him, the strip was not on public land. The suit lands are vacant.

18. When cross-examined by Mr Maruti, he stated that when he asked the owners of the suit land where the 2.5 m strip came from, they said that it came from the subdivision of the land. He was also not shown any correspondence from the respondent showing that the respondent had requested for surrender of the 2.5 m wide strip. There was no construction of any road at the time of the visit. He did not detect any threat to the suit properties from the operations of KeNHA on the ground.
19. DW1 Michael Obop, gave oral evidence and adopted the contents of his replying affidavit dated 27th January, 2025 as his evidence-in-chief. According to him, there is, according to PLUPA, a setback which is a piece of land which is usually left for public structures and utilities. During subdivision of land, that space is usually hived off. It is the same as a surrender, and it stops being the landowner's upon surrender. A certificate of compliance by a registered physical planner confirms if the subdivision meets the physical planning requirements. Subdivision cannot proceed without that certificate which is submitted through the surveyor. The process of subdivision is that ground boundaries are picked, then the mutation is prepared and signed and new numbers entered into the Land Register and title is issued indicating the new numbers. The Registry Index Map then is amended to reflect the size of the new parcels. According to him, the 6 parcels have defined boundaries and the strip left out is a setback required by the PLUPA and is reflected on the Registry Index Map. In the mutation, the setback is reflected as being 97.74 m long by 6.42 m wide. He stated that the purpose of the surrender is that there are highways where land owners cannot be allowed to join the highway anyhow, for example where a highway is raised. He emphasized that the strip was created after the subdivision of the suit land. Emphasized that paragraph 7 of the petitioner's director's affidavit confirms encroachment into the road reserve, and that the petition had moved its wall voluntarily; that a current wall is now at the edge of the setback and it does not interfere with the road construction; that the respondent is not even requesting for any land from the petitioner. He also stated that the dispute should have been determined by the Land Registrar. He also added that the 2.5 m white strip will not be required for road construction.
20. Upon re-examination by Ms Ombat, he stated that any subdivision demands the creation of a road reserve; that before the subdivision the strip, did not need to be there, but after the subdivision, the strip had to be created. He insisted that the whole wall was demolished by the petitioner.

Submissions.

21. The petitioner's submissions are dated 23rd September 2025. They identify the following issues for determination:
 - a. Whether KeNHA has objected to the authenticity of the petitioner titles and whether it has produced evidence showing lawful prior acquisition and compensation;
 - b. whether KeNHA may rely on a mutation form to defeat or alter the petitioner's registered titles and justify demolition or acquisition without complying with the statutory acquisition procedures;
 - c. Whether the petitioner's boundaries are fixed (beacons/deed plan) and therefore protected from KeNHA asserted road reserve claim absent lawful process;
 - d. whether KeNHA has complied with the statutory and Constitutional procedure for compulsory acquisition;



- e. whether KenHA's selective gazettement and compensation of neighboring properties while targeting the petitioner amounts to unlawful discrimination under Article 27 and unfair administrative action under article 47 or *the Constitution*;
 - f. Whether the correct legal approach to valuation and compensation requires assessment and market value together with additional heads (loss of business, severance, diminution of profits) and what evidence the petitioner must lead;
 - g. Whether the court should Grant a permanent injunction to restrain KeNHA from demolition and interference pending lawful acquisition and full payment of compensation.
22. Regarding the first issue, citing *Wreck Motors Enterprises Versus the Commissioner of Lands & 4 Others* 1997 KECA 391 KLR, counsel submitted that KeNHA has not objected to the authenticity of the titles to the suit land as having been fraudulently or illegally obtained and neither has it produced any documentary proof of prior acquisition payment or lawful surrender.
23. Regarding issue number two, he submitted that where boundaries are to be altered or fixed, an application must be made, survey carried out, cadastral plan approved, and the register amended by the Registrar. That absent this a mutation form even one bearing a Registrar's stamp is legally insufficient to alter a proprietor's registered rights. In the same breath the petitioner's counsel submitted that following the 2018 demolition, County and KenHA surveyors resurveyed the land and placed new beacons and a portion was lawfully surrendered and new titles issued; that the respondent did not provide any approved plan lodged with the Director of Surveys, confirming the alteration of the register, and the thus this court should not consider the mutation as of any probative value.
24. On issue number 3, counsel submitted that competing claims over the road reserve must be tested against the registered plan and beacon positions and cannot be sustained on mere assertions or extraneous administrative documents such as mutation print outs; that there is evidence that has been abused; that after the 2018 demolition the parcels were resurveyed and the beacons lawfully fixed and titles reissued; that the present wall lies inside the registered boundary line; that the respondent has not produced any documentary proof of a lawful amendment to the Registry Index Map or a valid statutory refixing of boundaries and that the petitioner's registered deed plans and beacons must be given priority by this court.
25. Regarding issue number four, it was submitted that KeNHA has not complied with the compulsory acquisition of land process governed by the mandatory provisions of PART VIII of the *Land Act* 2012; that gazettement alone does not complete compulsory acquisition process. The case of *Virendra Ramji Gudka & 3 Others Versus Attorney General* 2014 KEHC 7612 KLR was relied on for the proposition that the publication of a notice is but one step in the vesting of land in the state. The respondent never produced any gazette notice in respect to the suit parcels in question. No inquiry no award and no compensation yet neighboring land owners along the same corridor have been gazetted and compensated, but the petitioners land has been selectively excluded. It was submitted that in this case KeNHA has threatened demolition without gazettement, inquiry or compensation which amounts to a direct breach of Articles 40 and 47.
26. On issue number five, he submitted that Article 27 of *the Constitution* guarantees equality and freedom from discrimination while Article 47 enshrines the right to fair administrative action; that jurisprudence recognizes that where co-situated land owners are treated differently under identical circumstances, the administrative action is arbitrary and violates both equality and property rights in compulsory acquisition; that the acquiring authority is required to act uniformly following the same statutory process gazette meant inquiry valuation and a composition for all the affected proprietors



and any deviation must be justified with contemporaneous records demonstrating a rational basis, otherwise the action is unconstitutional and invalid.

27. Regarding issue number six, Citing Patrick Mosimba Versus NLC and Others on real market worth, it was submitted that the acquisition of the land should proceed only upon a market value assessment conducted by a licensed Valuer or a jointly appointed independent valuer; that such a valuation should include proven heads of severance, diminution of profits, and business loss; that the court should order that compensation be paid in full before KeNHA takes possession of any part of the suit parcels.
28. Regarding issue number seven, citing Mitu-Bell Welfare Society Versus Kenya Airways Authority 2021 and Space Geo Enterprise Ltd Vs KeNHA, he submitted that the court must issue a final restraining order to preserve private land and development unless lawful compulsory acquisition procedures are strictly followed.
29. Submissions dated 25th September, 2025 were filed for the respondent. Counsel for the respondent submitted that land reference giving to upper for seven or subdivided into several subplots namely plot numbers 2574 to 2718 and 2.5 m wide strip of land surrender for road expansion for an access road to the sub plots. That in 2018 a consolidation of land survey for 6 plots Nos 2640 to 2645 was carried out and a mutation serial number 0428833 prepared to create land parcel no 6107. Personal number 6107 was subsequently subdivided to create personal numbers Kilifi Mtwapa 6151 to 6156 herein referred to as the suit lands as shown in mutation number 04218832. That after division of parcel number 6017, the petitioner surrendered the 2.5 m wide strip for road widening further surrender of 6 m wide strip for the purpose of creating an access road to the subplots as depicted in the attached land acquisition drawings. However, the petitioner never released the said land on the ground and therefore the existing road reserve width had remained narrow.
30. Counsel for the respondent identified 3 issues for determination in this petition as follows:
 - a. Whether the petitioner's rights have been violated as alleged;
 - b. What are the court can issue orders and or prayers not specifically pleaded in the petition;
 - c. Whether the petitioner is entitled to the orders sought.
31. Citing Anarita Karimi Njeru Versus the Republic Number One 1979 1 KLR 54 and Mumo Matemu Versus Trusted Society of Human Rights Alliance Civil Application Number 290 Of 2012 2013 KLR, counsel submitted that Constitution of violations must be pleaded with reasonable degree of precision. That the petitioner had admitted that its consultants returned a verdict to the effect that the original wall that was demolished had encroached on the road reserve by 5.1 m on the southern boundary, that the respondent demolished 11.8 m whereas on the northern and boundary the respondent demolished 5.1 m through the encroachment was 10.7 m; that the implication of that admission is that the petitioner had admitted that there was boundary, and in 2018, it was encroaching onto the road reserve ; that no evidence has been adduced to demonstrate that the respondent demolished the properties on the suit premises as alleged. That thereafter, there was silence until 2021 when the petitioner allegedly received information and got apprehension that the respondent would encroach onto the suit property. Counsel singled out paragraphs 22 and 23 of the petition and submitted that the entire petition is founded on mere apprehension and no specific action attributed to the respondent. Citing Fred Matiangi the Cabinet Secretary Ministry Of Interior And Coordination Of National Government Versus Miguna Miguna And For Others 2018 789 KLR counsel submitted that courts cannot and do not deal with apprehensions and fears without cogent evidence being table to demonstrate violations.



32. Counsel further, submitted that the mutation forms it exhibited confirmed that a 2.5 m wide strip of land had been surrendered for road expansion for an access road to the subplots emanating from plot 407. Later, these were consolidated in 2018 to create plot no 6107. Counsel submitted that once the surrender was effected, the land so surrendered was for public utilities and access by the resultant parcel's owners, and no person could lay any claim on the surrendered portion; that the remainder of the plots had dimensions that tallied with each of the properties as captured in their respective title documents. Counsel relied on the Third Schedule of the Physical and Land Use Planning Act, subparagraph 7 which provides for access after subdivision and surrender of land for public utility; that the petition has not pointed out with precision how it's right have been violated. Counsel stated that the respondent does not challenge the legality of the petitioner's title. The respondent submitted that the application for subdivision which led to the surrender was made by the petitioner as the owner of the Land; that the mutation form was obtained from the Regional Surveyor Coast Region. Counsel relied on Judith Achieng Omondo Versus June Nyango Hossei And Another Francis Macharia Third Party 2021 K E E L C 1060 KLR for the proposition that the Registry Index Map and the registered mutation forms in case of subdivision play critical roles in the ascertainment of physical boundaries. Counsel also submitted that no evidence was led by the petitioner improve that the respondent demolished any of its property or encroached there on required by Section 107(1) of the Evidence Act.
33. With respect to the claim that the petitioner had done its due diligence and were apprehensive of interference by the respondent, it was submitted that no evidence by way of pictures was adduced to demonstrate construction of the road project on the suit property or an encroachment thereon. The Deputy Registrar's report does not find any demolition to have occurred. That the Deputy Registrar found that the dispute between the parties was basically up boundary dispute for which she recommended that the County Surveyor be asked to intervene to clearly determine where the access road is. The respondent submitted that it is not intent on acquiring the suit property as alleged and that no evidence has been adduced to demonstrate selective acquisition and compensation in respect of other properties within the road project.
34. It was submitted that the court cannot issue orders which have not been specifically prayed for. It was also submitted that the petitioners do not deserve the orders sought.

Analysis And Determination

35. The main issues for determination in the present petition are as follows:
- a. Whether the petitioner's rights and fundamental freedoms have been violated by the respondent;
 - b. Whether the orders sought by the petitioner ought to issue.
36. A scrutiny of the petition documents reveal that the petitioner's claim is that first, the respondent entered his properties and demolished its property, namely, the first wall erected along the boundaries of the suit properties alleging that the same were encroaching on a road reserve while no such encroachment had occurred. Secondly, after the wall was repositioned away from the road reserve after a survey that affixed beacons along the correct boundary, the respondent threatened further interference, and the petitioner developed an apprehension that the respondent intended, for a second time and in contravention of its Constitutional rights, to interfere with its quiet possession and enjoyment of the suit properties by demolishing structures on the properties without any legal basis, and without conducting the process of compulsory acquisition, and thereby occasion the petitioner irreparable harm. Thirdly, that the respondent's actions amount to a contravention of the Constitution.



37. The respondent's response to the petition is that by the time it came along the petitioner had already subdivided its land known as parcel no 6107 and surrendered a portion of it for road purposes to the Government, and that upon such surrender, the petitioner's title to the surrendered portion was extinguished, and the petitioner can not claim any compensation from the respondent for the same. That despite the surrender in the mutation, the petitioner retained the surrendered portion within and as part of its fenced premises, and that portion was only released for road purposes only when the perimeter wall was demolished by the petitioner; that the respondent has no interest in the petitioner's suit plots at all and its apprehensions that the petitioner will interfere with its quiet possession and enjoyment are misplaced.
38. It behoves this court to examine the evidence adduced before it to establish the correct facts and to determine whether they disclose any violations or threats of violation of the fundamental freedoms and rights of the petitioner.
39. The undisputed facts that emanate from the evidence of both parties is that there used to be a wall around the suit premises. The suit premises have not always borne the numbers that they have now. Before, the suit premises were part of a parcel known as Kilifi/Mtwapa 407. That parcel was subdivided into numerous plots numbered between Kilifi/Mtwapa 2574-2718, among them the suit plots, which were pursuant to that subdivision known by other numbers to wit Kilifi/Mtwapa/2640-2645. The plots Kilifi/Mtwapa/2640-2645 while being referred to by those other numbers, were consolidated into one plot known as Kilifi/Mtwapa/6107. Plot no 6107 was then subdivided into plots numbers 6151-6156. These are the plots subject of the present petition. This is where the narrative becomes controversial. The respondent avers that during the subdivision of plot no 6107 to create the suit plots, the petitioner surrendered a 2.5-metre-wide strip of land for road widening and a further 6-metre-wide strip as an access road to serve the subplots. The petitioner is non-committal on this point and has challenged the respondent's evidence on it on the basis that it is only premised on a mutation form and not a Registry Index Map, a deed plan or a survey plan from the Regional Surveyor's office, to which the respondent has retorted that even the mutation form it relied on originated from that office. To resolve that issue before any further dealing of the involved issues, this court has examined the evidence.
40. The certified copy of mutation signed as registered on 17/9/2018 by the Land Registrar shows that at the instance of the petitioner who affixed its seal on all the pages, the District Surveyor consolidated parcel numbers 2640-2645 into one parcel no. 6107 and upon the Land Registrar's registration thereof, he dispatched the registered copy to the District Surveyor and requested his office to amend the RIM and avail a copy to the Land Registry. Consolidation was therefore formally done as indicated by the respondent.
41. The second mutation signed as registered by the District Land Registrar on 18/10/2018 shows that parcel no 6107 was subdivided and the District Surveyor was, after the mutation's registration, requested to amend the Registry Index Map to reflect the changes. Subdivision was therefore formally conducted.
42. The respondent's main point in producing the second mutation is however to prove that a strip of land was surrendered to the government for road purposes. While examining the two mutations, it is clear that the first mutation never had a strip of land outside the boundaries of the suit plots separating them from the tarmac but the second one has. In the first mutation therefore, the plots extended to what appeared to be the boundary between them and the road reserve. That strip is evidently not part of the any of the suit plots and it has not been given a number, but its dimensions have been given as 6.42m by 97.74m. Page 2 of the Mutation registered on 18/10/2018 shows that the petitioner executed the instructions to excise the strip out of the suit plots and Page 1 of that mutation clearly identifies



that strip as a “road” whose total area is 0.05 ha. After that strip was carved out the dimensions of the plots were markedly reduced. Most of them used to be 0.41 ha before the consolidation but they were reduced to 0.39 ha after consolidation and subsequent subdivision described herein above. That was the strip that was released by the petitioner after demolition of the petitioner’s old wall which the respondent insists was implemented by the petitioner itself.

43. The petitioner admits that the old wall existed and that it was shifted to some inner spot where it stands to date, leaving the strip of land surrendered for road purposes as part of the road reserve. In admitting that the wall was relocated the petitioner has also admitted that the wall had been built on the road reserve, and that had been verified by its own investigation through a firm known as Seline Consultants Enterprises whose survey exercise revealed that the old wall had encroached on the road reserve by 5.1 metres. Therefore, by whoever the demolition was effected, the old wall had to be removed from the road reserve. However, evidence available is that when the wall was relocated, that action was done by the petitioner on its own behalf. If the reconstruction of the wall at an inner location was voluntarily done by the petitioner in observance of the contents of the mutation form registered on 18/10/2018 which it commissioned and by which it surrendered a strip of land for a road of access to the same plots it owned, that raises great doubt that it has any claim of violation as against the respondent for the preceding demolition. It is noteworthy that if it was the respondent who without any cause demolished the petitioner’s old wall, then the petitioner never brought any action for that action. The conclusion of this court is that the petitioner either admitted that it had been encroaching on a road reserve or that it waived its rights to bring such action against the respondent. Also, considering that no evidence whatsoever, save the uncorroborated verbal averments of PW1, has been adduced before this court by the petitioner to demonstrate that the respondent demolished the old wall, the conclusion of this court is that the petitioner admitted that its wall had encroached on the road reserve, and, for the purposes of releasing the surrendered portion of land for road purposes, it voluntarily brought down its old wall and also voluntarily erected a new one. Consequently, the respondent can not be held liable for any violations of the law and *the Constitution* regarding that demolition in this petition.
44. Regarding the allegation that the respondent has undertaken new activity that has threatened the petitioner’s quiet possession and enjoyment of the suit lands and that has occasioned the petitioner some apprehension of threatened or actual violation of its rights under *the Constitution*, the respondent has responded as follows: that while acquiring land for road construction it is normal for markings to be made on properties in order to guide the National Land Commission and the landowners as to the properties affected and to which extent. The respondent has expressly denied that it has targeted the petitioner’s new wall for demolition, and has in these proceedings by way of the sworn replying affidavit committed itself to restrict its road construction activity to the defined road reserve, and that it will not demolish the petitioner’s recently erected wall.
45. In the respondent’s submissions, it has been argued that the petitioner’s mere apprehensions do not give rise to any cause of action and that no concrete action has been attributed to the respondent to warrant such apprehension or even the bringing of the present action. In *Fred Matiangi the Cabinet Secretary Ministry Of Interior And Coordination Of National Government Versus Miguna Miguna And For Others* 2018 789 KLR the court referring to submissions made premised on mere apprehensions of future actions stated as follows:

“There was in fact nothing to indicate that such a process was being contemplated by any one. That means, naturally, that all the applicants voiced were apprehensions of indistinct-acts by unknown persons at some indeterminate time in future. With great respect, we think that those fears were still in the realm of speculation and conjecture and this Court cannot



move to stay the orders made by a court of competent jurisdiction on the basis of such far-fetched fears.

As and when such process gets initiated, the applicants and each of them would be free to seek the High Court's intervention in the various proceedings involving Miguna or this Court itself, for which liberty to apply is hereby granted. We direct further that the appeals once filed be fast-tracked."

46. In the present case the respondent has in a sworn affidavit of its officer, and a senior and apparently well informed one at that, committed itself to the express declaration that it will not interfere with the property of the petitioner. What greater assurance can be demanded from the respondent beyond that? In this court's view the respondent is correct in labelling the petitioners as mere apprehensions. I must state that it is only after the respondent has gone contrary to that declaration that the petitioner can have a cause of action and commence the appropriate action, even by way of a petition if need be. For the moment, this court finds no proof of violations or overt acts that may amount to threats of violation of the fundamental freedoms and rights of the petitioner to property under Article 40, or the right to fair administrative action under Article 47. I must also indicate that, considering the rule in *Anarita Karimi Njeru Versus the Republic* Number One 1979 1 KLR 54 and *Mumo Matemu Versus Trusted Society of Human Rights Alliance* Civil Application Number 290 Of 2012 2013 KLR that violations must be pleaded with reasonable degree of precision, no proof of violations regarding the rest of the cited Articles (48 & 60,) as the pleading in the petition apparently never attached much significance to their provisions or the manner in which they were alleged to have been contravened by the respondent, and focused on Articles 40 and 47 whose alleged violation has also been disproved.
47. The outcome of the foregoing discourse is that the present petition lacks merit and is hereby dismissed. However, considering the circumstances of the petition, I order that each party shall bear their own costs.

It is so ordered.

DATED, SIGNED AND DELIVERED AT MALINDI ON THIS 29TH DAY OF JANUARY 2026.

**MWANGI NJOROGE,
JUDGE, ELC, MALINDI.**

