



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS

ELC. CASE NO. 264 OF 2017

DAVID MUYA NDETIPETITIONER

VERSUS

KENYA URBAN ROADS AUTHORITY (KURA).....1ST RESPONDENT

MACHAKOS COUNTY GOVERNMENT2ND RESPONDENT

KITANGA ROADS & GENERAL CONTRACTORS LTD.....3RD RESPONDENT

HON. ATTORNEY GENERAL.....4TH RESPONDENT

JUDGMENT

1. In the Petition dated 4th September, 2015, the Petitioner averred that he is the registered proprietor of parcels of land known as Machakos Municipality Block 1/706 and 707 (*the suit properties*); that a road which is under construction is known as “*Church Road*” Machakos County (Lot 4) and that while this road ought to be straight, the same curves as it approaches the Machakos-Wote Road with the result that very little space is left between the edge of the tarmac and the suit properties.
2. The Petitioner has averred that the metal bollards have been put up by the Respondents whose effect has been to completely block the Petitioner’s access to his own properties.
3. It is the Petitioner’s case that the construction of the road without designs has resulted in a misalignment of the road with the effect that it veers towards the Petitioner’s land which is a violation of the Petitioner’s right to own property.
4. The Petitioner is praying for an order of mandatory injunction compelling the 1st Respondent to carry out remedial reconstruction of the road; an order compelling the 1st, 2nd and 3rd Respondents to remove the metal bollards erected on the road and adjacent to the suit land and an order of prohibition-restraining the 1st, 2nd and 3rd Respondents from erecting the said metal bollards adjacent to the suit land.
5. In response, the 2nd Respondent’s County Chief Legal Officer deponed that the works referred to by the Petitioner was awarded and supervised by the 1st Respondent; that the 2nd Respondent was not involved in the said works and that the Petition should be dismissed as against the 2nd Respondent.
6. The 3rd Respondent’s Director deponed that in the year 2014, the 1st Respondent awarded the 3rd Respondent a contract to improve “*Church Road*” which was an upgrade to tarmac standards of the existing road; that bollards were placed to create and protect the pedestrians and that the said bollards

were removed after the Petitioner and the 1st Respondent agreed.

7. According to the 3rd Respondent's Director, they have since completed the works and handed over the said road to the 1st Respondent.

8. The 1st Respondent did not file a response. The Petition proceeded by way of written submissions.

9. The Petitioner's counsel submitted that Article 40 of the Constitution protects the right to property of every person; that as a result of the Respondents' actions, the Petitioner's properties have been left with very little loading and off loading space and that the Respondents have not controverted those facts.

10. The 3rd Respondent's counsel submitted that as per the instructions of the 1st Respondent, the metal bollards were placed on the Machakos-Wote road to create and protect the pedestrian's way and that the Petitioner and the 1st Respondent agreed that the same be removed.

11. It is not in dispute that the Petitioner is the registered proprietor of parcels of land known as Machakos/Municipality Block 1/706 and 707 which abutts "*Church Road*" that has been recently tarmacked by the 3rd Respondent.

12. According to the Petitioner, instead of tarmacking the road in a straight line, the road was tarmacked in such a manner that it curved as it approached the Machakos-Wote road with the result that very little space was left between the edge of the tarmac and the Petitioner's land. Metal bollards were then erected by the 3rd Respondent on the side of the road adjacent to the Petitioner's parcels of land.

13. The Petitioner has exhibited photographs showing how close the metal bollards have been erected to his buildings.

14. The 3rd Respondent has not denied the Petitioner's depositions. Indeed, the 3rd Respondent's Director has deponed that he was instructed to remove the metal bollards by the 1st Respondent, which it did.

15.. Although the 1st Respondent claims that it removed the impugned metal bollards, it did not annex the pictures to prove that fact.

16. Considering that it is the 3rd Respondent that was retained by the 1st Respondent to maintain "*Church Road*" by tarmacking it, it ought to have strictly complied with the already existing design of the road.

17. Indeed, the right to own property as provided for under Article 40 of the Constitution includes the right to access the said property.

18. Having admitted that the metal bollards should not have been fixed too close to the suit properties, the 3rd Respondent should ensure that it removes them forthwith.

19. For those reasons, I allow the Petitioner's Petition dated 4th September, 2015 as prayed.

DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 23RD DAY OF NOVEMBER, 2017.

O. A. ANGOTE

JUDGE