



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
MILIMANI LAW COURTS
ELC NO. 972 OF 2012
FORMERLY CONSTITUTIONAL PETITION NO. 559 OF 2012

JAYANTILAL DHARAMSHI GOSRANI.....PETITIONER

=VERSUS=

THE HON. ATTORNEY GENERAL.....1ST RESPONDENT

KENYA NATIONAL HIGHWAY AUTHORITY.....2ND RESPONDENT

COMMISSIONER OF LANDS.....3RD RESPONDENT

PERMANENT SECRETARY, MINISTRY OF ROADS.....4TH RESPONDENT

JUDGMENT

The Petitioner filed a Petition dated 6th December 2012 wherein he prayed for orders that:

- a) *A declaration that the Petitioners' rights under Articles 27, 28, 29, 40, 47, 50, 60(1) and 64 of the Constitution have been violated by the Respondents.*
- b) *An injunction of mandatory nature does issue compelling the Respondents and particularly the 2nd Respondent either by themselves, their agents, servants, employees and any other person acting through them to unconditionally provide an access to and from Muranga Road to his Petrol Station Fuel Max Service Station situate at LR. No. 209/15289 (Originally No. 209/1581) situated at Ngara area along Muranga Road Nairobi by removing the pedestrian kerb.*
- c) *An injunction of a permanent nature does issue prohibiting the Respondents either by themselves, their agents, servants, employees and any other person acting through them from any manner whatsoever interfering with the quiet possession of the Petitioner's property developed as a Petrol Station being LR. No. 209/15289 (Originally No. 209/1581) situated at Ngara area along Muranga Road Nairobi.*
- d) *Compensation for breach of fundamental rights and freedoms*
- e) *Lost income in form of rent of Kshs. 800,000/- per month from January 2012 until when the*

pedestrian kerb is removed from the suit property to grant the Petitioner access and egress.

f) Any further orders, directions, or writs the Court may consider appropriate and necessary for purposes of enforcement, conservation, and preservation of the subject matter of the Petition.

g) Costs of the Petition.

The basis of seeking these prayers is outlined in the Petition supported by an affidavit and oral evidence. The Petitioner in his evidence alleged that he is the registered owner of **LR. No. 209/15289 (Originally No. 209/1581)** situated at Ngara area along Murang'a Road, Nairobi, on which property the Petitioner ran a Petrol Service Station. In **2008**, the Government through the office of the 3rd Respondent acquired a portion of the property. The Petitioner testified that he attended the meeting where the possibility of compulsory acquiring his property was discussed. Following the Environmental Impact Assessment Report, a portion of his property measuring **4,349sq** was acquired under the Land Acquisition Act (*now repealed*) through **Gazette Notice No. 1396 of 20th February 2009** addendum to **Gazette Notice Nos. 6034 and 6035** all of **11th July 2008**. As a result of the acquisition, he obtained approvals from the City Council to carry out the alterations, to wit, relocating the forecourt, the fuel station canopy on the forecourt, fuel underground tank, billboards and signage inwards of the property.

It is deposed by the Petitioner that in being paid the compensation of **Kshs. 20,240,000/-**, the Government had factored in the costs of the adjustments on the property and which was a clear indication that normal operation would resume once the road construction was complete. The Petitioner states that he sought approvals from relevant authorities prior to carrying out the adjustments and on completion he was issued with an occupation certificate by the City Council of Nairobi. However, after the completion and official opening of the road by the Head of State, the entry and exit to his property was completely blocked by a high pedestrian kerb, rendering the property landlocked thus useless. The Petitioner stated that the permitted user of his property as per the contents of the **Special Condition No. 3** beneath the title is that the land and buildings erected thereon shall exclusively be used for a Petrol Station. That this being a commercial property developed as a Petrol Service Station, he is prima facie entitled to access.

It is the Petitioner's case that the Respondents' action of completely blocking the entrance and exit to his commercial property is an infringement of his right to own and enjoy property. In evidence, he testified that the compensation was not for the entire property and neither was he offered an alternative site to put up his business. As a result, he has suffered loss of income in form of rent from the premises valued at **Kshs. 800,000/-** per month from **January 2012**. It was his testimony that the alternative access road intended to be provided by the 2nd Respondent is not viable for reasons that the said road is **4 meters** apart wall to wall, there is a sewage pipe passing through, it is not a two way road and therefore two vehicles cannot pass simultaneously. Consequently, the suggested alternative road cannot be used for purposes of a fueling station.

The Petitioner also stated that he has been discriminated against as other properties and Petrol Stations along the roads joining the Nairobi – Thika Super Highway have a direct entry and exit from the main road. The Petitioner particularized them as follows:

a) Arterial Connector 1 - the road running from Museum Hill, Limuru Road flyover through Forest Road to Pangani Inter-change: There is a Shell Petrol Station along Forest Road with a direct entry and exit.

b) Arterial Connector 2 – the road running from University of Nairobi to Globe Cinema round about through Muranga Road to Pangani Interchange:

(i) There is a Shell Petrol Station along University Way with a direct entry and exit.

(ii) The Kenya Institute of Education situate along Muranga Road has a direct entry and exit.

(iii) There is a bus stop directly on the main road along Murang'a Road.

(iv) There are path ways joining the main Murang'a Road directly one of which is the untarmarked Okoth Aura Road.

(v) Pangani Auction Centre along Murang'a Road has a direct entry and exit.

(vi) National Oil Petrol Station initially had a direct entry and exit from the main Murang'a Road.

(vii) Kipipiri Road directly joins Murang'a road.

(viii) Fountain Gate Church located on the opposite side of the road has a direct entry and exit.

c) Arterial Connector 3 – the road running from Haile Sellasie Avenue to Racecourse Road through Ring Road Ngara to Pangani Interchange:

(i) There is a Shell Petrol Station along Ring Road Ngara and has a direct entry and exit.

(ii) There is Kobil Petrol Station along Ring Road Ngara with a direct entry and exit.

The Petitioner contended that the Respondents continued to breach his right to acquire, own and enjoy property under **Article 40**, security of land rights under **Article 60 (1) (b)**, as well as his right to be treated in a dignified manner under **Article 28** as the Respondent have failed to respond to numerous letters from the advocates requesting for access to his property. Further, that the Respondents' actions have breached the provisions of **Article 10** of the Constitution on National Values and principles of governance which include the rule of law, democracy, participation of the people, human dignity, equity, social justice, inclusiveness, equality, non-discrimination, sustainable development, transparency and accountability.

On cross-examination, the Petitioner confirmed that he attended the meeting alongside other stakeholders where they were informed that part of the property would be acquired and that they would be able to continue with their businesses after the construction. They were however not notified that they would not have a direct access road. The Petitioner stated that he obtained approvals from the City Council of Nairobi but did not seek authorization to re-develop the property to a Petrol Station from the Permanent Secretary, Ministry of Roads and the Commissioner of Lands as is required under **Special Condition No. 1** of the Title. With respect to **Special Condition No. 11**, the Petitioner admitted that he required obtaining authority from the Local Authority for access and egress arrangements. His assumption was that he would be able to continue operations after the road construction. In any event, that other Petrol Stations along Murang'a Road which had been granted access such as National Oil Petrol Station.

On further cross-examination by Counsel for the 2nd Respondent, the Petitioner admitted that he did not surrender the title to the Commissioner of Lands after the acquisition. Consequently, he did not have a new Grant reflecting the reduced portion of the property. With respect to the approvals, the Petitioner stated that he did write to the City Council of Nairobi on **6th May 2010**, seeking approvals for alterations, when after he was advised in a response dated **17th May 2010**, to seek the services of an architect to draw amendment plans and obtain approvals from the City Engineer (Roads and Fire Section). Upon lodging the architectural plans, the Council granted approvals on **15th February 2011**. It was also his testimony that he had sought for loss of rental income as he had sublet part of the property where he would derive income of **Kshs. 600,000/-** per month. He however had no document to show that he had sublet the property.

Herbet Mwangi Kamau, a valuer, was called as a Petitioner's witness (PW2). He testified that the Petitioner instructed him on **4th December 2013**, to carry out valuation of the property. His instruction

was limited to advising the Petitioner on the Open Market rent of the property. It was his evidence that he examined the entire property and noted that there were fuel pumps, first food restaurants, shops, offices and amenities. There was also a service area and car wash area. His opinion was that a monthly rent of **Kshs. 800,000/-** exclusive of VAT and service charge was ideal. PW2 produced his report dated **4th December 2012** as Exhibit No. 3.

On cross examination, PW2 confirmed that he was aware that part of the property had been acquired. However, his report was based on the title deed before the acquisition and he therefore did not examine the Deed Plan and Survey Map after the acquisition. He also did not know the dimension angle of the acquisition. Further, he did not look at the conditions in the Grant neither did he do a search after the acquisition. It was his evidence that he arrived at the amount of **Kshs. 800,000/-** per month upon examining the entire development using the comparative method based on market rates. PW2 admitted that there were no comparative rents annexed to his report. It was also his evidence that as at the time of carrying out his instructions, the shops were not occupied and the Petrol Station was not operational.

The Respondents opposed the Plaintiffs case and in response called various witnesses. **Eng. Samuel Ogege**, the General Manager Design and Construction of the 2nd Respondent swore a Replying Affidavit on **24th January 2013**, wherein he deposed as follows. The 2nd Respondent is an autonomous road agency established through the **Kenya Roads Act, 2007** responsible for the management, development, rehabilitation and maintenance of international trunk roads linking centres of international importance and crossing international boundaries or terminating at international ports (**Class A roads**), National trunk roads linking internationally important centres (**Class B roads**), and primary roads linking provincially important centres to each other or two higher-class roads (**Class C roads**). The Nairobi – Thika Super Highway is a Class A Highway meant to ensure direct connection from **Mombasa to Lagos** and is therefore part of the **Trans Africa – Highway (A-104)**. The deponent outlined the characteristics of a highway as follows:

- a) Highways are distinguished by being numbered;*
- b) Ingress and egress from Highways is regulated through designated exists and entry into the service roads and no direct private property access is allowed;*
- c) The design may incorporate dedicated parallel sections under specific authority;*
- d) They are characterized by restricted number of locations for user access;*
- e) Junctions on highways are grade separated with other roads or modes of transport;*
- f) Highways are characterized by high speeds.*

It was deposed throughout the design and planning stage, it was apparent that direct access for most properties from the Highway was not going to be possible. During consultation with stakeholders, the design concept of the new road was discussed and the public was made aware that direct access to the road would be curtailed and allowed only at controlled junctions along the road. It also became necessary to compulsorily acquire parts of the individual properties to facilitate road expansion. In support hereof, the deponent annexed correspondences showing communication between stakeholders on deliberations of access to individual property and approvals for re-development after compulsory acquisition (*annexures GK1, GK2, GK3, GK4, GK5*).

The deponent stated that it was clear from the nature and characteristics of a Highway access to the highway was only to be offered in limited instances, and the Petitioner's property together with other neighboring properties did not qualify. The deponent admitted that the project did encounter challenges and complaints from the stakeholders which led to compulsory acquisitions and amendments to design to ensure traffic management was dealt with. The deponent maintained that as a general rule, no direct access was provided to properties on the Highway and in particular Murang'a Road unless the same were on a service lane or a road junction, or the property owners and their neighbors had surrendered a **4 meter**

acceleration and deceleration lane. It was his deposition that the examples cited by the Petitioner as instances of discrimination are distinguishable for reasons that they are properties on the opposite side of Murang'a Road from the Plaintiff's property or fall within the exceptions. The deponent contended that none of the properties neighboring the Petitioner's property were given direct access to the Highway.

With respect to the Plaintiff, the deponent stated that the 2nd Respondent determined that the access and egress from the Highway to the suit property is not practical. However, it has endeavored to provide alternative access and egress. It was deposed that a parallel service lane to Murang'a Road from **Desai Road Junction** and **Okoth Aura Junction** is being developed as an alternative road for use for individual access to the properties on Murang'a Road. In support hereof the deponent annexed copies of letters showing the progress of provision of access to commercial properties on Murang'a Road (*annexures GK9, GK9A, GK10, GK11, and GK13*). The deponent further deposed that the determination of access and exit of the suit property by the 2nd Respondent is not discriminatory nor is it based on any grounds prohibited by **Section 27(4) of the Constitution**. Conversely, the determinations on access/egress of the suit property and adjoining properties were made strictly on the basis of sound Highway construction principles, sound land use, planning principles, and with utmost concern for public safety and public order as provided under **Section 60 of the Constitution**.

The deponent stated that the Government upon compulsorily acquiring part of the suit property and adequately compensating him did not guarantee the Petitioner either expressly or impliedly that he was allowed to redevelop the Petrol Station, as there was no guarantee for access or egress was given. Further, that the Petitioner redeveloped the property without consulting or seeking approval from the 2nd Defendant as required by **Special Condition 11** of the Grant to the property which provides that; **access and egress for the site will be in accordance with the requirements of the local authority and such other authority as may be responsible for any adjoining roads**. The deponent referred to **Section 35 of the Physical Planning Act Cap 286** Laws of Kenya deposing that a development which affects major public policy, and in this instance, access/egress from a major highway must be referred to Liaison Committee. Consequently, had the Petitioner filed a reference to the committee as required by law, he would have been properly advised before incurring expenses.

It was also deposed that the Petitioner re-developed the property without disclosing to the relevant authorities the changed circumstances. He further obtained licenses without disclosing the plans for re-development, for instance, obtaining the license to store petroleum in an underground kerbside tank. Thus, that the Petitioner came to court with unclean hands. Additionally, the Petitioner failed to seek approvals from the 2nd Respondent, the Commissioner of Lands or the Energy Regulatory Commission, because he was aware that the suit property was not suitable for operation of the Petrol Station after the compulsory acquisition. Furthermore, that prior to the redevelopment the Petitioner was advised by the Town Clerk of the City Council of Nairobi, in a letter dated **17th May 2010**, to seek the input of the City Engineer Roads and Fire Section, which advice was ignored (*annexed on Petitioner's affidavit Pg.47*).

Eng. Michael S.M. Kamau CBS, HSC, the Permanent Secretary of the 4th Respondent swore a Replying Affidavit on **16th April 2013** in response to the Petition. The affidavit is a recapitulation of the affidavit sworn by **Eng. Samuel Ogege**, summarized hereinabove.

In evidence, **Eng. George Mwangi Kiiru** (DW1) testified that the construction of Thika Super Highway was to ease traffic along Nairobi – Thika Road and designed such that vehicles would move at high speed. Consequently, direct access to properties along the highway was not possible but service roads to the said properties were provided. It was his evidence that there was a challenge with properties along Murang'a Road as there was no adequate space to provide the main Highway, Service Roads, Pedestrian Walk way and access roads. Consequently, no property was given direct access.

On cross examination, DW1 testified that Thika Super Highway is classified as a Class A road which is an International trunk road. The superhighway starts at the junction of University way or the way to Murang'a road..... There are three arms to the superhighway, the main one being the one that starts at Globe Cinema. The other connectors are Forest road and Ngara Ring Road, and they offload traffic to the

superhighway. He reiterated that sound highway principles are safety and speed. With respect to Muranga Road, DW1 explained that it is a direct service road where vehicles are supposed to get out of the city in the quickest way to avoid traffic snarl-ups. DW1 admitted that there were other Petrol Stations along Murang'a Road, besides that of the Petitioner - **Kenol Kobil and National Oil** – which did not have direct access to the Highway. It was his evidence that the Government fully compensated the property owners for what was acquired based on the valuation reports. Consequently, that upon compensation to the Petitioner, it was expected that there would be change of user. DW1 testified that an alternate access road – Desai Road - was provided, which is behind the Petitioner's property, and meets the standard requirements of an access road. With regards to the stakeholder meetings, DW1 testified that meetings took place but he did not avail minutes in that regard and there was therefore nothing to show that the Petitioner was in attendance.

DW1 was referred to Pg. 99 of the Petitioner's bundle of documents, a photograph showing the destruction of storm drainage. To this, DW1 testified that the original storm drainage was broken down after the road had been inaugurated and in use. In acknowledging that it was wrong, DW1 testified that he did not know what necessitated the breaking of the storm drainage. DW1 was also referred to Pgs. 71, 74 and 76 of the Petitioner's bundle of documents being photographs showing a Shell Petrol Station and Kobil Petrol Station both along Ring Road Ngara wherein he admitted that the access and egress was fronting the main road. In respect of Pgs. 97 – 100 of the Petitioner's bundle of documents being photographs showing the alternative access road, DW1 acknowledged that there is a barrier at the frontage of the access road. It was his evidence that it is a public road and he was therefore uncertain why and who placed the barriers on the access road. DW1 testified the lane photographed on Pg. 100 of the Petitioner's bundle of documents is a two-lane road of between 6 – 7 meters but with no provision of a walk way, pavement or cycle tract. Pgs. 101 and 102 also showed the access road with overhead power lines and the same had been blocked. It was his evidence that the access road is suitable for a petrol tanker to navigate.

On re-examination, DW1 reiterated that the 2nd Respondent did not discriminate the Petitioner since all the properties along Muranga Road had their ingress and egress on Thika bound section closed. DW1 stated that the Shell Petrol Station on Forest Road has an access as it is on the Nairobi Bound part of the road, and therefore different from the Petitioner's which is on the Thika Bound section. With regards to the Shell Petrol Station on Ring Road Ngara, DW1 explained that the section has a totally different level of service. He stated further that Forest and Muranga roads, are of different service levels, with Muranga Road classified under level B. He explained that there are levels A to F, the latter being the lowest. Classifications of roads into the levels are determined by indicators such as number of lanes and speed of vehicles, hence the reason why the properties on the connectors are granted access as opposed to the roads on the Highway.

DW1 referred to a letter dated **12th June 2008** from the Ministry of Roads annexed on Pg. 1 of the Defendant's Bundle of Documents and testified that the letter was an instruction to Ministry of Lands, City Council of Nairobi, Physical Planning Department, Municipality of Ruiru and the Chief Engineer (Roads) to refer any developments within a distance of **30m** on either side of the Nairobi – Thika Highway to the Ministry of Roads prior to the approval, for purposes of coordinating the development with the road construction.

The Petition was further canvassed by way of written submissions which I have carefully read and considered the authorities referred to by counsels. In Constitutional Petitions, the duty of the Court is, as stated in the case of **Masai Mara (SOPA) Limited v Narok County Government Petition No. 336 of 2015 [2016] eKLR**

...determine through the Petitioner's evidence whether the Bill of Rights applies to the instant dispute. Secondly will be to answer the question whether the Petitioner's rights or freedoms have been impinged. Finally, if the rights have been impinged, is to determine whether there is a justification for the limitation to the right in question according to the criteria set out in Article 24 of the Constitution.

Every person is guaranteed equality and freedom from discrimination under **Article 27** of the Constitution. In this case, I wish to adopt the definition of Discrimination as was stated by the European Court of Human Rights in **Willis v The United Kingdom, No. 36042/97, ECHR 2002 – IV** and **Okpiz v Germany, No. 59140/00, 25th October 2005**, quoted in the case of **Rose Wangui Mambo & 2 Others vs Limuru Country Club & 17 Others (2014) eKLR** that,

...discrimination means treating differently, without any objective and reasonable justification, persons in relevantly similar situations.

The question that arises therefore is whether the Petitioner was treated differently from the other property owners without any objective and reasonable justification. From the narrative hereinabove, the undisputed facts are that the Petitioner is the registered owner of the suit property which was partially acquired by the Government. The compensation paid to the Petitioner for the partial acquisition is not frowned upon. The Petitioner's dispute is that following the completion of the superhighway, the 2nd Respondent erected a pedestrian kerb on the frontage of his property thereby shutting off access and exit therefrom. As a result his business – a Petrol Service Station - was rendered unusable. The Petitioner pointed out that other properties along Murang'a Road where his property is situate as well as other Petrol Service Stations on Forest and Ngara roads which have access and exits. This, according to the Petitioner amounts to discrimination and therefore a violation of **Article 27** of the Constitution.

This claim was opposed by the Respondents. **Mr. Ngugi** counsel for the 2nd Respondent submitted that the comparison as instances of discrimination between properties on the Thika Bound and Nairobi Bound routes as well as the connector roads were distinguishable based on the characteristics of each road. It was submitted that the 2nd Respondent's action of restricting access and exit was envisaged in **Special Condition No. 11** of the Petitioner's Title/Grant which provides that access and egress from the site will be in accordance with the requirements of the local authority and such other authorities as may be responsible for any adjoining roads. Further, that the denial of access was guided by Sound Highway construction principles, land use planning and utmost concern for the public safety and order as provided under **Article 60 of the Constitution**.

Ms. Wambui, Litigation Counsel with the office of the AG on behalf of the 1st, 3rd and 4th Respondents referred the Court to the case of **Rose Wangui Mambo & 2 Others vs Limuru Country Club & 17 Others (2014) eKLR** where the Court referred to the case of **Peter K. Waweru v Republic (2006) eKLR** where discrimination was defined as follows:

“...Discrimination means affording different treatment to different persons attributable wholly or mainly to their descriptions by...sex whereby persons of one such description are subjected to...restrictions to which persons of another description are not made subject or are accorded privileges or advantages which are not accorded to persons of another such description... Discrimination also means unfair treatment or denial of normal privileges to persons because of their race, age, sex...a failure to treat all persons equally where no reasonable distinction can be found between those favoured and those not favoured”

It was counsel's submission that all properties situate along Murang'a Road had been denied direct access to the highway and there was thus no advantage that had been afforded to other persons whilst denying the Petitioner.

It is without doubt that there is a restriction of entry and exit on the frontage of the Petitioner's property on the Highway. This therefore makes his Petrol Service Station business unfeasible.

As discussed above, discrimination is treating persons in a relatively similar situation differently. The Respondents contended that no property along Murang'a Road was granted direct access or exit to the Highway on the basis of Highway construction principles. I have examined the photographs annexed to the Plaintiff's bundle of documents filed on **29th October 2013**, and as well as those annexed to the affidavit in support of the interlocutory application. There is National Oil Petrol Station along Murang'a

road which has no access and exits to the Highway. Additionally, during the site visit, the Deputy Registrar of this Court confirmed that there were several properties along Murang'a Road which had no ingress and egress including Kobil Petrol Station.

The Petitioner contended that there were other properties on Muranga Road that have direct access to the Highway and it was therefore unfair that he was denied access. Examples of such properties were the **Pangani Auction Centre and Fountain Gate Church**. In response, the Respondents stated that the exception was that access would be granted in limited instances where the properties were firstly on controlled road junctions, secondly, where there were service lanes and thirdly availability of space measuring **4m** to allow for a deceleration and acceleration lane. In the report following the site visit, the Deputy Registrar noted that **Pangani Auction Centre** had access and exit to the Highway. It was however noted that there is a feeder road and a service lane explaining the access to the said property. With respect to the **Fountain Gate Church**, it was observed that the same was on the Nairobi Bound of the Murang'a Highway where most properties had access to the Highway. It was also observed that there was a service lane that ended at the Fountain Gate Church hence the reason for the grant of access.

The Petitioner also made reference to other Petrol Stations on **Forest Road** and **Ring Road Ngara** that had direct access to the highway. DW1 in his evidence explained the different circumstances obtaining in Forest and Ngara Roads and **Muranga Road**. It was his evidence that these roads have different service levels and therefore fall into different categories. It was further testified that **Muranga Road** is classified under Class B since it is a direct service road where vehicles are supposed to set out of the city in the quickest way to avoid traffic snarl-ups.

On the foregoing, the answer to the question whether the Petitioner's rights under **Article 27** of the Constitution was impinged is in the negative. Petrol Stations and other businesses along Murang'a Road were all treated in the same manner that is, denied access to the highway on the basis of sound highway principles. Road classifications, road junctions, service lanes and deceleration and acceleration lanes were the distinctions explaining the difference in treatment of the Petitioner's property and those that had access to the highway. Suffice to add, the Petitioner's freedom from discrimination is limitable within the precincts of **Article 24 of the Constitution**. Sound Highway principles including safety and characteristics of international trunk roads outlined by the Respondents, as captured hereinabove, are in my view the important purpose of the limitation as stipulated under **Article 24(b) of the Constitution**.

In respect to **Articles 40, 60 and 65 of the Constitution**, The Petitioner contended that the Respondents continued to breach his right to own and enjoy property in view of the restriction of access and exit which rendered the property landlocked thus useless. The Petitioner contended that under Special Condition No. 3 of this title, the user of his property was that of a Petrol Station. It was his evidence that he obtained the relevant approvals from the City Council of Nairobi to carry out the structural adjustment following the partial acquisition with a view to recommence his business as soon as the road construction was complete. The Petitioner did indeed obtain an approval from the Council to carry out structural adjustments. The Respondents however brought to the attention of the Court the letter dated **12th June 2008**, from the Ministry of instructing the Ministry of Lands, City Council of Nairobi, Physical Planning Department, Municipality of Ruiru and the Chief Engineer (Roads) to refer any developments within a distance of **30m** on either side of the Nairobi – Thika Highway to the Ministry of Roads prior to the approval, for purposes of coordinating the development with the road construction. The Petitioner also admitted failing to seek approvals from the 2nd Respondent as is stipulated under **Special Condition No. 11** of the title. Whereas **Special Condition No. 3** gives the user of the property as Petrol Service Station, the same is not cast in stone. Change of user is an option available to the Petitioner. It is thus my finding that the Petitioner's right to enjoy property has not been curtailed by the Respondents.

Having found that the Respondents were not in breach of the Constitutional provisions cited, it follows therefore that the Petitioner is underserving of the injunction reliefs sought. Having now carefully considered the Petition herein, the available evidence, the relevant laws and the written submissions, the court finds that the Petition is not merited and the same is dismissed entirely. I however make no orders as to costs.

It is so ordered.

Dated, Signed and Delivered this **9th** day of **August, 2016**.

28 days Right of Appeal.

L.GACHERU

JUDGE

In the Presence of:-

Mr Muchoki for the Petitioner

None attendance for the 1st, 3rd and 4th Respondents

None attendance for the 2nd Respondent

Hilda: Court Clerk

L.GACHERU

JUDGE