



Gatere & another v Kenya Electricity Transmission Co Ltd (Environment & Land Case E039 of 2023) [2024] KEELC 4560 (KLR) (10 June 2024) (Ruling)

Neutral citation: [2024] KEELC 4560 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT & LAND CASE E039 OF 2023**

**FM NJOROGE, J
JUNE 10, 2024**

BETWEEN

CATHERINE MUTHONI GATERE 1ST APPLICANT

FRANCIS K KARIUKI 2ND APPLICANT

AND

KENYA ELECTRICITY TRANSMISSION CO LTD RESPONDENT

RULING

1. In the application filed on 6/11/2023 the plaintiffs sought against the defendant orders of injunction to restrain it from interfering with LR No 12889/64-Kilifi (the suit land) pending the hearing and determination of the present suit. The grounds on which the motion has been brought are that the plaintiffs own the suit land but the defendant has, without acquiring or compensating the plaintiffs for the suit land, trespassed thereon and cut down trees, dug trenches and constructed pillars and the plaintiffs’ efforts to halt that interference have failed hence the suit and the application; that the interference is an infringement of the plaintiff’s right to own property and to quiet possession thereof. The plaintiffs consider the defendant’s conduct to be contrary to the rule of law, arbitrary, capricious, high handed and impermissible and in breach of the national values and principles of good governance and the right to equal protection and benefit of the law and an infringement to the constitutional right to private property under Article 40 of *the constitution*. The application has been supported by the sworn affidavit of the 1st plaintiff.

Response.

2. The defendant filed a replying affidavit sworn by one Charles Kariuki, its land economist. The deponent stated that the defendant described is a corporation in the public sector tasked with electricity transmission infrastructure development, and who has contracted international contractors for the project to construct the Rabai –Bamburi-Kilifi and Kipevu Link 132 KV transmission line project and



that the ownership of the suit land by the plaintiffs is not controverted. He states that however, the title to the suit land is held subject to overriding interests as set out in Section 26 (1) as read with Section 28(c) (i) and (j) of the [Land Registration Act](#) and Section 43 of the [Land Act](#). The deponent further says that delays in the contract works, even those concerning wayleave acquisition process would be paid for by the defendant. The project began with mapping and the plaintiffs' land was identified as one of those parcels to be affected and so it was earmarked for compulsory acquisition. A Gazette notice was issued requiring the owners of affected parcels to register their objection to the project with the National Land Commission but no objection was received. Valuation was carried out for the concerned parcels and the suit land was assessed in the sum of Kshs 2000,000/= as per a valuation report dated 25/4/2023. The deponent described the wayleave acquisition process as one in which the land is not compulsorily acquired as a whole but in which there is limited loss of land use due to the acquisition of right of way over the land, and compensation therefor is paid based on the value of land as at the cut-off date, the impact of the project on the property and the affected acreage. Computation of compensation payable, he stated, is guided by the valuation exercise and the respondent's 2021 Resettlement Policy Framework. He further stated that the defendant has already issued a letter of offer of compensation to the plaintiffs, but no response thereto has been received. He adds that the project is for public benefit and resource intensive and will reduce electricity costs in Kenya, and that the orders sought will halt the project implementation and lead to expensive claims by the contractors for the resultant delay, which expense will be borne by the public and the plaintiffs would not be able to bear such expense in any event if the orders are granted. Further institutional objectives will be delayed or defeated if the orders sought are granted. He thus sees no prejudice in denying the orders sought, and cites public interest as militating against the grant of such orders.

Applicant's supplementary affidavit.

3. The plaintiffs filed supplementary affidavit, sworn by the 1st plaintiff, on 11/12/23. The deponent therein stated that the plaintiffs are not privy to the contracts entered into by the defendant for the project; that the land described in the gazette as LR NO 1289/55 and LR No 1289/64 does not belong to them and that their parcel is LR NO 12889/64; that as the latter parcel was not gazetted, that means that Part X of the [Land Act](#) has not been complied with by the defendant and thus they were under no obligation to raise any objection; that they have never been involved in any valuation exercise for their land; that the letter of offer mentioned by the respondent has never been served on them and no affidavit of service thereof is exhibited, and that in any event it lacks inter alia their postal address. They also averred that according to that letter a legal easement-creating instrument was to be executed by the offerees and registered, and compensation was to be effected after registration was accomplished. The deponent also pointed out a discrepancy between the surveyor's valuation and the disputed offer. In toto, they state that the respondent's entry without prior satisfaction of those requirements amounted to trespass.

Preliminary Objection.

4. Before the above supplementary affidavit was filed, the defendant filed a notice of preliminary objection on 16/11/23 in which it stated as follows: that this court lacks jurisdiction to hear and determine the suit in view of the provisions of Section 3(1) and 224 of the [Energy Act](#) 2019 as read together with Regulations 4(a) and 7 of the Energy (Complaints and Disputes Resolution) Regulations 2012 and the holding regarding jurisdiction in Kisumu Civil Appeal No 42 Of 2021 - Abidha Nicholas v Attorney General & 7 Others.
5. I issued directions that the preliminary objection be determined early within the application and that disposal of the motion would be by way of written submissions. I have considered the plaintiff's two



sets of submissions filed on 11/12/23 and on 31/1/2024 and the defendant's filed on 28/12/23 while preparing the present ruling.

Defendant's Submissions On the Preliminary Objection.

6. On whether this court has jurisdiction the defendants cited *The Owners of Motor Vessel "Lillian S" v Caltex Oil Kenya Ltd* 1989 1 KLR 1, *Samuel Kamau Macharia & Another v Kenya Commercial Bank & 2 Others* Application No 2 Of 2011, *Sombo K. Sombo & 2 others v KETRACO & 3 others* Kwale ELC Case NO E021 of 2021, *Osman Gutu Wachu & another v KETRACO Ltd Malindi ELC* E008 of 2022 and Section 11(i) of the *Energy Act* 2019, stating that the Act supersedes any other Act and that it vests jurisdiction to investigate and determine disputes between a licensee (such as the defendant) and a third party upon the Energy and Petroleum Regulatory Authority. It is therefore urged that Section 3(1) of the *Energy Act* provides that if there is a conflict between that Act and any other, the Act shall prevail on the matters relating to inter alia, transmission of electrical energy and all works and apparatus for any or all that purpose.
7. In addition, stated the defendant, Regulation 4(a) and 7 of the Energy (Complaints and Disputes Resolution) Regulations 2012 vests original jurisdiction over disputes touching on wayleave and transmission upon the Authority and under Section 24(1) of the Act, appeals from the Authority's determinations lie to the Energy Tribunal from which appeals lie to the High Court under Section 37. On the other hand, states the defendant, the ELC has appellate jurisdiction over matters arising from subordinate courts and tribunals in matters that fall under its jurisdiction under Section 13 of the ELC Act; that consequently, this dispute, which the respondent claims is in respect of illegal acquisition of wayleave should have been first lodged at the Authority so that any hierarchy of appeal from the authority's decision would ultimately reach this court as per the holding in the *Abidha Nicholus* case (*supra*).
8. The defendant urges that by virtue of Section 224(2)(e) of the *Energy Act*, prior subsidiary legislations which have not been expressly revoked, including the Energy (Complaints and Dispute Resolution) Regulations 2012, were applicable and that therefore this court has jurisdiction on the matter only in an appellate capacity.

Plaintiff's Submissions On the Preliminary Objection.

9. The plaintiffs aver that the defendant's only objection is that the doctrine of exhaustion has not been respected. They stated that they have claimed infringement of their constitutional rights under Article 40 and that the defendant has failed to follow the rule of law, and that it has trespassed onto the property; that, citing *William Odhiambo Ramogi & 3 Others v AG & 4 Others* 2020 eKLR, where the doctrine would not serve constitutional values the court would permit a suit to proceed regardless of whether or not a party has exhausted the prescribed process; that, citing *Abdirahman Abdi v Safi Petroleum Products Ltd & Ors* 2011 eKLR a court has to do justice between the parties without undue regard to technicalities of procedure in accordance with Article 159(2)(d) and that the plaintiffs are thus exempt from the provisions of the Energy (Complaints and Disputes Resolution) Regulations 2012.

Determination

10. That the defendant asserts that the plaintiffs' is a claim of illegal acquisition of wayleave which should have been first lodged at the Authority so that any hierarchy of appeal from the authority's decision would ultimately reach this court as per the holding in the *Abidha Nicholus* case (*supra*) necessitates



this court to conduct a preliminary inquiry is to establish the true nature of the claim. The plaintiffs have stated as follows in their plaint dated 24/10/23:

- a. They own plot no LR No 12889/64-Kilifi;
- b. The defendant without colour of right of plaintiffs' consent trespassed onto the land and interfered with the property including the vegetation thereon committing acts of waste thereon;
- c. No part of the suit land has been lawfully acquired by the defendant or any compensation therefor given prior to the trespass;
- d. The defendant has failed to follow the rule of law and has conducted itself in a high handed, capricious manner and in breach of the national values and principles of good governance, the right to equal protection and benefit of the law guaranteed under articles 10 & 27 of the constitution and in violation of the plaintiff's right to property under article 40 of the constitution.

11. The plaintiffs seek the following prayers:

- a. A declaration that they are the lawful proprietors of the suit land;
- b. An order of permanent injunction;
- c. An order of eviction;
- d. An order of demolition of the pillars already constructed or are being constructed on the property;
- e. Punitive damages;
- f. Costs.

12. It is thus crystal clear that the plaintiff's claim in the present suit is for trespass to land. To buttress this the plaintiffs, in response to the defendant's averment that: they have a project in process and that it affects the plaintiff's land, state as follows:

- a. that they had communicated with the project affected persons and the plaintiffs' land was identified as one of those to be affected and so it was earmarked for compulsory acquisition;
- b. that a Gazette notice was issued requiring the owners of affected parcels to register their objection to the project with the National Land Commission but no objection was received;
- c. that Valuation was the carried out for the concerned parcels and the suit land was assessed in the sum of Kshs 2000,000/= as per a valuation report dated 25/4/2023 was met with the response that those were matters unknown to the plaintiffs.

13. The plaintiffs have established that their land was not included in the process described by the defendant in that:

- a. the land described in the gazette as LR NO 1289/55 and LR No 1289/64 does not belong to them.
- b. their parcel is known as LR NO 12889/64;



- c. as the latter parcel was not gazetted, that means that Part X of the Land Act has not been complied with by the defendant with regard to their parcel and thus they were under no obligation to raise any objection;
 - d. that they have never been involved in any valuation exercise for their land; that the letter of offer mentioned by the respondent has never been served on them and no affidavit of service thereof is exhibited.
14. Part X of the Land Act is in regard to “easements and analogous rights”. It is the part that a party should show they have complied with in order to claim that their acquisition of a wayleave over a third party’s land is legal. The defendant never filed any rebuttal to the claim that the plaintiffs’ land was not gazetted, and that they were not involved in the processes it had allegedly carried out. On those premises this court finds that there are triable issues of alleged trespass and violation of the plaintiffs’ constitutional rights to property to be dealt with at the substantive hearing of the suit.
15. In *Abidha Nicholus* (supra) the Court of Appeal dismissed an appeal against the decision of the ELC. The ELC decision had upheld objections to a suit on the basis that the appellant had not invoked or exhausted the dispute resolution mechanism provided for under Section 129 (1) ,2,3 & 4 Of EMCA and that the petition had offended provisions of Sections 3(1) 10,11(e) (f), (i), (k) & (i) , 23,24,36,40,42, and 224 of(2)(e) of the Energy Act 2019 and Regulations 2,4,7, and 9 of the Energy (Complaints and Disputes Resolution) Regulations 2012 as read with Article 159(2)(c) and 169(1) (d) and Sections 9(2) and 9(3) of the FAA.
16. In the *Abidha Nicholas* ruling (ELC) the court observed as follows with regard to the objection on matters electricity transmission:
- “I do find that the Petitioner’s complaint against the 8th respondent is in respect of way leaves, easements or rights of way in relation to the distribution and supply of Electrical energy. The petitioner alleges that the 8th Respondent has allowed Electrical posts to be placed in his parcel of land and that the Authority has the power to entertain the dispute. If dissatisfied, the petitioner can move to the Tribunal. This court further finds that Section 9 (2) and 3 of the fair Administration Act 2015 removes this kinds of disputes from this court and places jurisdiction to the Energy Authority.
- The upshot of the above is that the objection raised by the 8th respondent succeeds and the petition against the 8th Respondent is struck out as there is alternative mechanism for resolving the dispute.”
17. I have examined the provisions of the law the defendant in this case anchors its preliminary objection on and they are certainly fewer than the spectrum of provisions relied on by the objector in *Abidha Nicholus* (supra), and I will not tire of setting them out as verbatim as hereunder for ease of reference:
18. Section 3(1) of the Energy Act provides as follows:
- “
- “3. Act to prevail
- (1) If there is a conflict between this Act and any other Act, this Act shall prevail on the following matters—



- (a) the importation, exportation, generation, transmission, distribution, supply or use of electrical energy;
- (b) the exploration, production, transportation, distribution, and supply of any other form of energy; and
- (c) all works and apparatus for any or all of these purposes.”

Section 244 of the [Energy Act](#) provides as follows:

224. Repeals and savings

- (1) Subject to the provisions of subsection (2), the [Energy Act](#) (No. 12 of 2006) (Repealed), the Kenya Nuclear Electricity Board Order (L.N. 131/2012) and the Geothermal Resources Act (No. 12 of 1982) are repealed.
- (2) Notwithstanding the provisions of subsection (1)—
 - (a) anything done under the provisions of the [Energy Act](#), or by the Minister or by the Cabinet Secretary under the provisions of the [Energy Act](#) (No. 12 of 2006) (Repealed), the Kenya Nuclear Electricity Board Order (L.N. 131/2012) and the Geothermal Resources Act (No. 12 of 1982) (Repealed) before the commencement of this Act shall be deemed to have been done under the provisions of this Act;
 - (b) any statutory instruments issued by the Commission, or by the Cabinet Secretary under the provisions of the [Energy Act](#) (No. 12 of 2006) (Repealed), the Kenya Nuclear Electricity Board Order (L.N. 131/2012) and the Geothermal Resources Act (No. 12 of 1982) (Repealed), before the commencement of this Act shall be deemed to be statutory instruments granted by the Authority under the provisions of this Act and shall remain in force until specifically revoked under this Act;
 - (c) any revocation of a licence under this Act shall not indemnify the licensee from any liabilities to which the person may have become liable under the Act before such revocation;
 - (d) the tariffs existing at the commencement of this Act shall continue being in place until new tariffs are gazetted under this Act; and
 - (e) any subsidiary legislation issued before the commencement of this Act shall, as long it is not inconsistent with this Act, remain in force until repealed or revoked by subsidiary legislation under the provisions of this Act and shall, for all purposes, be deemed to have been made under this Act.

Section 11(1) of the [Energy Act](#) provides as follows:

11. Powers of the Authority



The Authority shall have all powers necessary for the performance of its functions under this Act and in particular, the Authority shall have the power to—

- (a) issue, renew, modify, suspend or revoke licences and permits for all undertakings and activities in the energy sector;
- (b) set, review and approve contracts, tariffs and charges for common user petroleum logistics facilities and petroleum products;
- (c) set, review and adjust electric power tariffs and tariff structures and investigate tariff charges, whether or not a specific application has been made for a tariff adjustment;
- (d) prescribe the form and manner in which any application for any authority, licence, consent or approval under this Act shall be made and the fees payable in respect of such application;
- (e) make and enforce directions to ensure compliance with this Act and with the conditions of licenses issued under this Act;
- (f) issue orders in writing requiring acts or things to be performed or done, prohibiting acts or things from being performed or done, and may prescribe periods or dates upon, within or before which such acts or things shall be performed or done or such conditions shall be fulfilled;
- (g) formulate, set, enforce and review environmental, health, safety and quality standards for the energy sector in coordination with other statutory authorities;
- (h) approve electric power purchase and network service contracts for all persons engaging in electric power undertakings;
- (i) investigate and determine complaints or disputes between parties over any matter relating to licences and licence conditions under this Act;
- (j) enter, inspect and search any premises where an offence is being committed or is suspected to have been committed;
- (k) issue orders or directions to ensure compliance with this Act;
- (l) impose such sanctions and fines not exceeding one hundred thousand shillings per violation per day for a maximum of thirty days;
- (m) enter, inspect and search any premises at which any undertaking relating to petroleum operations is carried out or an offence is being committed or is suspected to have been committed;
- (n) issue orders either requiring acts or things to be performed or done, prohibiting acts or things from being performed or done, and may prescribe periods or dates upon, within or before which such acts or things shall be performed or done or such conditions shall be fulfilled in furtherance of its powers under the law relating to petroleum;



- (o) impose such sanctions and civil fines not exceeding five hundred thousand shillings per violation per day to secure compliance with orders issued under the law relating to petroleum;
- (p) take or remove, for analysis, testing or for use in evidence in connection with the commission of an offence under the law relating to petroleum, samples of petroleum or other substances from any area where any upstream petroleum operations are being carried on; and
- (q) inspect, take extracts from, or make copies of any document relating to any upstream petroleum operations.

Regulation 4(a) provides as follows:

“These regulations shall apply to complaints and disputes in the following areas: billing, damages, disconnection, health and safety, electrical installations, interruptions, licensee practices and procedures, metering, new connections and extensions, reconnections, quality of service, quality of supply, tariffs, way leaves, easements or rights-of-way in relation to the generation, transmission, distribution, supply and use of electrical energy.”

Regulation 7 provides as follows:

- “7. (I) In the event that any complaint is not resolved to the dispute and satisfaction of the complainant, after exhausting the complaints handling procedures established pursuant to regulation, the parties may declare a dispute, and both or any one of them may refer it to the Commission for recourse.
- 2. A party to a dispute may refer the dispute to the Commission in form S-2 as set out in the Second Schedule.
- 3. Where a dispute has been referred to the Commission, the Commission shall appoint a mediator who shall assist the parties to reach a settlement within thirty days from the date of such appointment.
- 4. Where the dispute
 - a) is resolved through mediation in accordance with paragraph (3), the parties shall file their settlement agreement with the Commission within five days, and the agreement shall be final and binding on both parties.
 - b) is not resolved through mediation in accordance with paragraph (3), the procedures set out in regulations 8 to 16 shall apply.”

Section 24 of the *Energy Act* provides as follows:

“



“ 24. Appeal against a decision of the Authority

- (1) A person aggrieved by a decision of the Authority may appeal to the Tribunal within thirty days of receipt of the decision.
- (2) Notwithstanding subsection (1), the Tribunal may entertain an appeal after the expiry of the thirty-day period if it is satisfied that there was sufficient cause for not filing it within that period.”

Section 37 states as follows:

“ 37. Power of review and appeals from Tribunal

- (1) The Tribunal may, on its own motion or upon application by an aggrieved party, review its judgments and orders.
- (2) Judgments and orders of the Tribunal shall be executed and enforced in the same manner as judgments and orders of a court of law.
- (3) Any person aggrieved by a decision of the Tribunal may, within thirty days from the date of the decision or order, appeal to the High Court.
- (4) The law applicable to applications for review to the High Court in civil matters shall, with the necessary modifications or other adjustments as the Chief Justice may direct, apply to applications for review from the Tribunal to the High Court.”

19. The broad spectrum of activities envisaged by the regulations cited above, and special regard must be had in this respect to Regulation 4(a), must be construed ejusdem generis. Regulation 4 provides that regulations shall apply to complaints and disputes in the following areas: billing, damages, disconnection, health and safety, electrical installations, interruptions, licensee practices and procedures, metering, new connections and extensions, reconnections, quality of service, quality of supply, tariffs, way leaves, easements or rights-of-way in relation to the generation, transmission, distribution, supply and use of electrical energy.”
20. In this court’s view, the *Energy Act* and the Regulations are meant to apply, according to Regulation 2 thereof, to any person who has a complaint or a dispute regarding any licence, permit, contract, code, conduct, practice or operation of any party or any matter regulated under the Act.
21. The definition of “complaint” and “dispute” in Regulation 3 then comes into sharp focus. A complaint is defined as follows:

“... includes a dissatisfaction with the service rendered by, or a practice of any person carrying out any undertaking pursuant to a licence, permit or registration issued or granted by the Commission, under the Act.”

while a dispute is defined as follows:

“...a disagreement that exists, [after] the parties acting in good faith have failed to reach an amicable resolution of a complaint after all due efforts have been made to resolve it.”



22. The definition of “complaint” and “dispute” in Regulation 3 obviously fails to include or imply inclusion of such matters as trespass and violations of the constitutional rights of persons whose land has been interfered with by the defendant.
23. Once the matters in Regulation 4 are construed ejusdem generis, it is thus clear that issues related billing, damages, disconnection, etc. relate to persons who have formed a legal relationship with the authority or its licensees in connection with the activities or duties they latter are mandated to undertake and application of the rules and Act with regard to complaints and dispute resolution mechanisms thereunder must be in respect of those persons only. The gazettelement and other preparatory acts by the defendant with respect to the plaintiff’s land are what would have created that relationship. As that relationship has not been created, the *Energy Act* and the Energy (Complaints and Disputes Resolution) Regulations 2012 are inapplicable and thus matters of alleged trespass and violation of the plaintiffs’ constitutional rights to property are not the issues envisaged by the Act and Regulations and they are clearly for trial and determination by the original jurisdiction of this court. It would be indeed unclear how could the plaintiffs could report any complaint or lodge any dispute under the Act while the process of wayleave acquisition over their land has never been disclosed to them by the defendant. It is correct that there is an overwhelming host of statutory and subsidiary provisions that govern the disputes between the defendant and complainants, but these can not kick in unless the actions of the defendant have been properly invoked under the *Energy Act*, and any act outside that statute calls for the ordinary remedies between citizens. Thus the plaintiff’s claim against the defendant being not about the irregularity of the wayleave acquisition process but about trespass and violation of constitutional rights regarding land, Articles 22, 162(2) (b) of *the Constitution* of Kenya 2010 and Section 13(1) (2) of the *Environment and Land Court Act* confer original jurisdiction to this court to hear and determine the dispute. The mere entry into the land by the defendant and construction thereon while claiming without providing proof that notice had been given to the plaintiffs and that gazettelement of their land had been carried out is not sufficient to enable the defendant invoke the provisions of the Act against the plaintiffs and thereby seek shelter under the doctrine of exhaustion. The acts and omissions of the defendant have left the plaintiff unaffected by the Act and Regulations in a manner that enables them to seek redress for torts and violations of constitutional rights. On the basis of the foregoing I therefore find that the Regulations and the provisions of the *Energy Act* cited by the defendant do not apply to them at all and consequently the doctrine of exhaustion does not therefore apply in the present case and the present parties.
24. The preliminary objection raised by the defendant must therefore fail and it is hereby dismissed with costs.

Injunction

25. The second issue is whether the application by the plaintiff has merit. It seeks a temporary injunction restraining the defendant from interfering with the suit land any further pending the hearing and determination of the suit.
26. Injunctions are governed by several principles, to wit, whether a prima facie case with a probability of success has been made out by the applicant, whether there is risk of irreparable loss if the injunction order is not granted, and lastly, what is the balance of convenience.
27. I have examined the submissions of the plaintiffs on their application; they rely on the renowned cases of *Giella v Cassman Brown* [1973] EA 358 and *Mrao v First American Bank of Kenya Ltd & 2 Others* [2003] eKLR. They point out that the defendant was supposed to have an easement registered in accordance with the law prior to entering onto the suit land and conducting their project activities



- thereon but none was so registered. They have demonstrated that the defendant has committed certain acts on the property such as excavation and clearing of vegetation. The defendant on the other hand, citing the same case law, argues that the plaintiffs have not met the threshold for the grant of an injunction. They also cite the case of *Lawangiro Camel Farms Ltd v Kenya Electricity Transmission Company Ltd 2017 eKLR* which to this court is distinguishable on the basis that contrary to the situation in the present suit, the defendant therein had obtained the permission of the landowner. I have explored the issue of trespass and violation of constitutional rights as herein above and by the same argument it must be admitted that the plaintiffs have demonstrated that they have a prima facie case.
28. The second issue is whether the plaintiffs may suffer irreparable loss that can not be adequately compensated by way of damages. On this particular issue the plaintiffs state that the defendant usually negotiates with the respective landowners of the affected property to grant easement over the land; that compensation was to be made only upon adhering to the letter of offer which was not served upon the plaintiffs, with the consequence that the defendant now argues that the plaintiffs never gave that letter a response. It is on that basis that they state that they may suffer irreparable loss.
29. The defendant states that it is ready to compensate the plaintiffs for the right of way. I consider that willingness as part of the mitigating factors that render the plaintiffs' situation not extremely dire. I have also considered that despite the mishaps of the defendant outlined by the plaintiff very lucidly, it having been disclosed and agreed that the project the defendant is involved in is a national project and, just as in *Lawangiro Camel Farms Ltd (supra)* it is of great value to the national economy, an injunctive order may do great public harm considering the claim regarding prospective penalties for delay that the defendant is to then suffer.
30. Furthermore, *the Constitution* provides for deprivation of private property for a public purpose or in the public interest as long as the process is carried out in accordance with the provisions thereof.
31. In this regard I also observe that the defendant is no stranger in matters compensation, having been instrumental in similar projects nationwide, and there are structures in place for redress for any grievances that may arise out of the wayleave acquisition as well as the compensation process. In the circumstances I fail to find that the plaintiffs may suffer loss that can not be compensated for by way of damages.
32. The application dated 25/10/2023 therefore lacks merit and the same is dismissed, but in the discretion of this court I order that the costs thereof shall be borne by the defendant. The parties shall comply with the rules, the plaintiffs within the first 30 days from the date of this order and the defendant within 30 days of the period granted to the plaintiff as herein and this matter shall be mentioned on 9/10/2024 for issuance of a hearing date.

RULING DATED, SIGNED AND DELIVERED AT MALINDI VIA ELECTRONIC MAIL ON THIS 10TH DAY OF JUNE, 2024.

MWANGI NJOROGE

JUDGE, ELC, MALINDI

