



**Manua & another v Kenya Forest Service & 2 others (Environment & Land
Petition 003 of 2024) [2024] KEELC 6079 (KLR) (20 September 2024) (Judgment)**

Neutral citation: [2024] KEELC 6079 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT & LAND PETITION 003 OF 2024
A OMBWAYO, J
SEPTEMBER 20, 2024**

BETWEEN

JOEL ATUTI MANUA 1ST PETITIONER

MUTHONI MURIUKI KIRUI 2ND PETITIONER

AND

KENYA FOREST SERVICE 1ST RESPONDENT

GREEN ZONES DEVELOPMENT SUPPORT 2ND RESPONDENT

PROJECT PHASE II 3RD RESPONDENT

JUDGMENT

Brief Facts

1. This is a judgment in respect of the Petition filed on 18th April, 2024. The subject of this Petition is that the Petitioners contend that there was lack of public participation in the decision-making process by the Respondents. The Petitioners contend that they are the lawful occupants of suit Nakuru Municipality Block 18/77 which is delineated by a public road separated by a forest. The Petitioners contend that the Respondents have since acquired and fenced off the public road bordering their property thus interfering with their accessibility and utilization of their property. The Petitioners also contend that the commencement of the said construction works was in violation of Article 23 of *the Constitution*.
2. The Petitioners sought for the following orders:
 1. A declaration that the acquisition and encroachment upon the public road separating the Petitioners property from the forest by the Respondents are in regal and constitutional and in violation of the statutory provisions outlines in the petition.



2. An order directing the respondents to cease all activities related to the illegal acquisitions and encroachment upon the public road along Mountain View road off Maragoli road forthwith.
3. An injunction restraining the respondents, their agents, servants and or any other persons acting under their authority from further interfering with the public road along Mountain View road off Maragoli road.
4. Any other just and equitable relief as this Honourable court may deem fit to grant in the circumstances.

Petitioners' case

3. The Petitioners aver that among others own the suit property known as Nakuru Municipality Block 18/77. They further aver that the 1st Respondent acquired and encroached upon a 20M wide public road that separates the Petitioners without having followed the due process. They added that the due process are as mandated by various statues including but not limited to the Land Act, Physical Planning Act, Kenya Roads Act and the Kenya Forest Conservation and Management Act. The Petitioners contend that the said encroachment was illegal as it interfered with their right to freely access the road and movement within the neighborhood.
4. They contend that the lack of public participation in the decision-making process leading to the construction of the fence was a violation of Article 10(2) and 22 of the Constitution. They contend that the Respondents' actions have made it difficult for them to access and utilize their property effectively by restricting and disrupting their use of the property.

Response

5. The Respondents did not file any response to the Petition.

Submissions

6. Counsel for the Petitioners filed his submissions dated 17th July, 2024 where he basically highlighted the typographical errors on the reliefs sought in the petition. Counsel also submitted that the Respondents removed the fences without fixing of the beacons, a buffer zone and a fire break.

Analysis and Determination

7. This court has considered the case put forward by the Petitioners together with their supporting affidavit and submissions filed and is of the view that the sole issue for determination is:

Whether the Petition is merited.

8. This court appreciates that the petition is uncontroverted. In addition, the Petitioners have clearly stated their case and in as much as the court would consider delving into the merits of the case, the Petitioners have equally submitted that the said fence were removed. It is in view of the above that the substratum of the petition no longer exists. It is not in dispute that the Petitioners filed the instant petition due to the fence put up by the Respondents. It therefore meant that the cause of action was the put-up fence which interfered with the Petitioners' constitutional rights. It is this court's view that the Petitioners having submitted that the Respondents removed the same, the petition therefore cannot stand.



9. The upshot of the foregoing is that, this court finds the Petition lacking legs on which it could stand on since the cause of action no longer exists and is therefore dismissed. This court also finds that this being a public interest case, each party shall bear its own costs. It is so ordered.

JUDGMENT DATED, SIGNED AND DELIVERED ELECTRONICALLY THIS 20TH DAY OF SEPTEMBER 2024.

A.O.OMBWAYO

JUDGE

