



**Drum Major Properties Limited v Kenya National Highways Authority
& another; Nyange (Interested Party) (Environment & Land Case
E014 of 2021) [2023] KEELC 15784 (KLR) (22 February 2023) (Judgment)**

Neutral citation: [2023] KEELC 15784 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ENVIRONMENT & LAND CASE E014 OF 2021
A NYUKURI, J
FEBRUARY 22, 2023**

BETWEEN

DRUM MAJOR PROPERTIES LIMITED PLAINTIFF

AND

KENYA NATIONAL HIGHWAYS AUTHORITY 1ST DEFENDANT

NATIONAL LAND COMMISSION 2ND DEFENDANT

AND

TECLA MWAKE NYANGE INTERESTED PARTY

JUDGMENT

Introduction

1. The Plaintiff instituted this suit by way of Originating Summons dated April 19, 2021 seeking the following orders;
 - (a) That this matter be certified as extremely urgent and the same be heard on priority basis for purposes of prayer 2 below.
 - (b) That this Honourable Court be pleased to issue an order of temporary injunction to restrain the Defendants either by themselves, their agents, employees or servants from entering onto, taking possession of, demolishing or otherwise interfere with the Plaintiff's ownership, possession and or occupation of the subject property being Mavoko Town Block 64/534 pending the hearing and determination of this suit.
 - (c) That an order be and is hereby issued compelling the 1st and 2nd Defendants (Kenya National Highways Authority and National Land Commission) to forthwith pay the Plaintiff the sum



of Kenya Shillings Forty-Nine Million, One Hundred Sixteen Thousand, Eight Hundred Thirty-Six (Kshs 49,116,836.00) being the principal amount awarded to the Plaintiff by the 2nd Defendant as compensation for the compulsory acquisition of the portion hived off from property being Mavoko Town Block 64/534.

- (d) That the Defendants be and are hereby compelled to pay to the Plaintiff/Applicant interest due on the principal amount of the award in two (2) above calculated at the rate of 12% per annum from January 7, 2021 being the date of the award until payment in full.
 - (e) That the costs of this application be awarded to the Plaintiff/Applicant.
2. The Originating Summons was supported by the affidavit sworn on April 19, 2021 by Mutuku Kilewe, the Director of the Plaintiff, and the grounds on the face of the Originating Summons. The Plaintiff's case was that they are the registered owner of the land known as Mavoko Town Block 64/534 situated in Athi River along Mombasa – Nairobi Highway (suit property).
 3. The Plaintiff further stated that the 2nd Defendant acted on instructions by the 1st Defendant and issued a statutory notice in the Kenya Gazette that a portion of land from the suit property was to be acquired compulsorily by the 1st Defendant for purposes of construction of a second carriageway of the Athi River – Machakos Turnoff (A109) Road in Machakos County. Further that upon issuance of the notice above, a public hearing to identify the owners of the properties to be acquired was conducted and the persons to be compensated were required to avail copies of their identity cards, KRA Personal Identification Number (PIN) land ownership documents and bank account details.
 4. It was the Plaintiff's averment that through their Director Mr Mutuku Kilewe, they attended the hearings of the Defendants and they were confirmed the person to be compensated and subsequently upon due assessment, were issued with an award for the sum of Kshs 49,116,836/- for the acquisition of the portions to be hived off from their two parcels of land. The Plaintiff complained that the Defendants have failed to compensate the Plaintiff the aforesaid assessed sum, despite the 1st Defendant having notice to the Plaintiff's tenants to vacate and their threats to demolish the permanent structures standing on the suit property.
 5. The Plaintiff stated that they were aware that the Defendants have paid other persons whose properties were compulsorily acquired within the same locality and pursuant to the same process. Therefore, the Plaintiff stated that the Defendants are under obligation to pay them compensation for the suit property, promptly and sought for the said payment plus interest at 12% per annum. The Plaintiff produced a copy of title of Parcel No Mavoko Town Block 64 (GIMU) 534 measuring 0.2395 Ha, an award dated January 7, 2021, Plaintiffs demand letter dated April 8, 2021 and the letter from the 1st Defendant dated March 2, 2021.
 6. Upon service, the 1st Defendant entered appearance by a Memorandum of Appearance filed on May 25, 2021 while the 2nd Defendant entered appearance by a Memorandum of Appearance filed on May 31, 2021.
 7. The Originating Summons was opposed. The 1st Respondent, Kenya Highways Authority through one Milcah Muendo, the Assistant Director, Survey Mapping in the Survey Department in the Directorate of Highway Planning and Design at the Kenya National Highways Authority swore a replying affidavit dated August 20, 2021. It was the 1st Respondent's case that the 1st Respondent has the mandate of construction, managing, developing, operating, upgrading, rehabilitation and maintaining of National Trunk Roads.



8. The 1st Respondent stated that they were presently undertaking the construction of the second carriageway of Athi River – Machakos Turnoff Road (hereinafter referred to as the project). They confirmed that 0.039 Ha was acquired from Parcel Mavoko Town Block 64 (GIMU) /534 vide Kenya Gazette Notice No 7839 of September 30, 2016 for the Mombasa – Nairobi Standard Gauge Railway (SGR) project. That although the acquisition was under the Mombasa Nairobi SGR project, the same was to be used for the development of Athi River Machakos Road.
9. They further stated that part of the suit property was again gazetted for acquisition through Gazette Notice No 9536 of September 29, 2017. That however, acquisition of the parcel was cancelled through Gazette Notice No 7839 of March 6, 2020 because the road was redesigned to fit in the existing 80 meter reserve and the area acquired by Kenya Railways through the above Gazette Notice of 2016. They also averred that the boundaries of the suit property were in conflict with the road reserve and since the project was funded by the world cup, the 2nd Respondent inspected and carried out valuation and issued the Applicant with a compensation award for the affected developments so as to comply with the World Bank Operation Policy on involuntary settlement.
10. The 1st Respondent stated that the 2nd Respondent in their letter dated February 22, 2021, forwarded a comprehensive compensation schedule to the 1st Respondent asking the latter to transfer the compensation amounts to their accounts for onward transmission to the beneficiaries. That the Applicant was identified as a project affected person and hence a beneficiary to the compensation. Further, that the 1st Respondent authorized expenditure of the funds for the project transferred to the 2nd Respondent's bank account towards payment of the Applicant's sum as per the award in the sum of Kshs 49,166,836.64. Hence, the 1st Respondent confirms that they compensated the Applicant in the sum of claimed and was to be given vacant possession to construct the project road.
11. The 1st Respondent stated that they were aware of a private dispute on ownership between the Applicant and one TMN and that the parties requested that the 2nd Respondent do preserve the allocated compensation funds payable in respect of the project until the family dispute and the matrimonial property case is settled and determined. They therefore stated that they fulfilled their obligation by forwarding the sums for compensation of the Applicants developments but that the delay in paying the Applicant was occasioned by the ownership dispute with the Applicant's family. They pleaded that as the Government agencies had nothing to do with the dispute between the Applicant and one TMN, they should be allowed to take possession of the subject parcel of land to allow construction works to continue. That as the amount due to the Applicant was determined and forwarded, it would be unjust enrichment to grant interest at 12% per annum. The 1st Respondent attached the Gazette Notice dated 30th September 2016, Gazette Notice dated 29th September 2017 and March 6, 2020, letter dated 22nd February 2021 and compensation schedule from the 2nd Respondent to the 1st Respondent, a letter dated 3rd March 2021 and the [particulars withheld] Gross Settlement (RTGS), authorizing expenditure of the funds and letters dated July 9, 2020, June 25, 2020, July 16, 2018, July 13, 2018 and August 27, 2018 from TMN and WMK demonstrating the existence of a dispute on ownership of the suit property.
12. The 2nd Defendant also opposed the Originating Summons. Jacob Lemasika Kipaa, the Chief Valuation and Taxation Officer of the 2nd Defendant, filed a replying affidavit sworn on July 2, 2021 on behalf of the 2nd Defendant. It was the 2nd Defendant's case that they were mandated under Section 107 of the Land Act to compulsorily acquire interests in land on behalf of the County and National Government and that Section 111 of the Land Act requires the acquiring body to deposit funds with the 2nd Defendant before acquisition is undertaken.



13. They further averred that the 1st Defendant requested the 2nd Defendant to compulsorily acquire the suit property for the construction of the second carriageway of Athi River – Machakos Turn Off Road (A109). That upon conclusion of the inquiry, the 2nd Defendant made an award of Kshs 49,166,836/- in favour of the Plaintiff as compensation.
14. The 2nd Defendant maintained that under Section 115 (c) of the *Land Act*, the 2nd Defendant cannot make payment on compensation where there is a dispute as to the rights of the persons entitled to receive the compensation or as to the shares in which the compensation is to be made. The 2nd Defendant stated that the suit property is subject to court proceedings being Civil Suit No 37 of 2013 (OS) which Matter is yet to be determined and that that was also confirmed by a letter from the advocates for the Plaintiffs in that suit.
15. It was the 2nd Defendant's contention that the Plaintiff was fully aware of the reasons for holding the remittance due to him and that therefore his suit is devoid of merit and a blatant abuse of the court process.
16. TMN filed an application dated December 15, 2021 seeking to be joined to this suit as an interested party. On February 7, 2022, when the application came up for hearing, all the parties confirmed that they were not opposed to the application and therefore the court granted orders joining the Applicant TMN as an Interested Party to these proceedings, granting her 21 days to file and serve her pleadings. Pursuant to those orders, the Interested Party filed her replying affidavit dated March 1, 2022 on even date.
17. It was the Interested Party's case that having learnt in 2018 that the suit property was earmarked for compulsory acquisition, she did a letter protesting the release of money meant for the project to the Plaintiff since the suit property was subject of a matter pending before court namely Nairobi HCC OS No 37 of 2013, which is pending hearing and determination. The Interested Party further stated that she filed matrimonial property cause against MK who is her former husband and majority shareholder of Drum Properties Limited vide Nairobi HC OS 37 of 2013 which matter is pending hearing and determination.
18. According to her, although the land is registered in the name of Drum Major Properties Ltd, she acquired the same together with MK in the year 2004 during the subsistence of their marriage and that therefore, the transfer of the property to Drum Properties Ltd was to defeat the Interested Party's claim. She maintained that she contributed towards the acquisition of the suit property. She sought that this matter should be stayed to await determination of Nairobi HC OS No 37 of 2013.
19. She attributed the delay in determining Nairobi HCC OS No 37 of 2013 to reasons beyond her control among them that the court file has on several occasions gone missing and that Mr Mutuku Kilewe contributed to the delay by failing to file his defence on time. She further lamented that despite MK being aware of an injunction over the suit property, he failed to disclose that fact to this court. Her position was that if MK is given access to compensation amount sought without her share being ascertained, she stands to suffer great prejudice.
20. In a rejoinder, Mr Mutuku Kilewe filed a supplementary affidavit sworn on September 5, 2022. He stated that the injunction of the Interested Party was to derail the payment of the compensation sought as she was neither a director nor a shareholder of the Plaintiff and that she had not availed any evidence of the relationship between her and the Plaintiff. He also stated that the Plaintiff is not a party in the matrimonial cause.



21. He conceded that the dispute between him and the Interested Party was pending before the family court. His position was that if the family court decides that he should share any property or monies with the Interested Party, the latter can then execute the decree against him and therefore she should not deny the Plaintiff the moneys due to them. He stated that his failure to file a defence should not bar the Interested Party from prosecuting the matrimonial cause.
22. He maintained that the Defendants had conceded to his claim and that this court cannot decline granting remedies provided for in the Constitution.
23. On May 12, 2022, the court directed that the Originating Summons shall be determined by way of written submissions. On record are the Plaintiff's submissions filed on September 9, 2022, the 1st Defendant's submissions filed on October 19, 2022, the 2nd Defendant's submissions filed on October 21, 2022 and the Interested Party's submissions filed on September 15, 2022.

Plaintiff's Submissions

24. Counsel for the Plaintiff submitted that pursuant to Article 40 of the Constitution, there is an obligation upon the state to ensure that no person is deprived of their property unless the deprivation is in public interest and upon just and prompt compensation. To buttress this position, counsel referred the court to the case of Geyser International Assets Limited v Attorney General & 3 others [2021] eKLR.
25. It was further submitted that the 1st Defendant conceded that the Plaintiff was identified as a project affected person and therefore a beneficiary to the compensation. Counsel argued that it is now two years since the award was issued yet there is no payment made to the Plaintiff and no explanation has been given by the 2nd Defendant for failure to pay. Relying on the case of Modern Coast Builders and Contractors Limited v National Land Commission [2021] eKLR, counsel argued that the only reason that should justify non payment is where there is a challenge against title of the Plaintiff and that no such adverse claims challenging the Plaintiff's title have been shown. It was therefore contended that delay in payment of the assessed award caused the Plaintiff great injustice and breach of their right to property ownership. Counsel pointed out that as the possession had already been taken by the 1st Defendant, the Plaintiff had lost his source of income as the property had been rented out at the time of acquisition.
26. On whether the claim by the Interested Party was justified, counsel submitted that upon inquiry, the 1st Defendant had already confirmed that the beneficiary of the payment was the Plaintiff and that the 2nd Defendant never objected to the payment.
27. Counsel relied on the case of Salomon v Salomon & Co. [1897] AC 22, to contend that the Plaintiff and one MK were two separate entities and therefore the Interested Party had not shown his relationship with the Plaintiff. Further, counsel contended that there was no evidence of the manner of the Interested Party's contribution in the purchase of the suit property. In addition, it was argued for the Plaintiff that the Interested Party had not provided any evidence from the family court to show an order declaring that she is entitled to a share of the compensation sought by the Plaintiff. Counsel argued that this court has no jurisdiction to determine matrimonial cause between the Interested Party and one MK.
28. Counsel pointed out that the Interested Party and Mutuku Kilewe had claimed and counterclaimed against each other and that these claims are still pending determination. Counsel referred to Section 7 of the Matrimonial Causes Act and the Case of E.T v Attorney General & another [2012] eKLR, to argue that this court has no jurisdiction to hear the dispute between the Interested Party and the Plaintiff. Counsel maintained that even if the family court were to decide in favour of the Interested



Party, the latter shall not be without remedy and shall not suffer any prejudice as the decree against MK would be enforceable in law.

1st Defendant's Submissions

29. Counsel for the 1st Defendant submitted that although the Plaintiff had sought for an injunction in the Originating Summons, they had not satisfied the conditions for grant of injunction set out in the cases of *Giella v Cassman Brown* [1973] EA 358, *Nguruman Ltd v Jan Bonde Nielsen & 2 others* CA No 77 of 2012 and *Mrao v First American Bank of Kenya Limited & 2 others* [2003] eKLR.
30. It was argued for the 1st Defendant that the Plaintiff was guilty for non disclosure of material facts. Counsel contended that the 1st Defendant complied with the law and made an award for the sum claimed by the Plaintiff but that letters from Tecla MN and WMK demonstrated that the two had a claim on the suit property and requested that the compensation be withheld. Counsel was of the view that the compensation funds could not be released until the issue of ownership is resolved.
31. It was the position of the 1st Defendant that road construction is time bound and as the suit property had been valued and the amount ascertained, it would be against public interest to stop the project by injunction as sought by the Plaintiff which would result in contractual ramifications to the detriment of tax payers. To buttress that argument, counsel referred the court to the cases of *Kenya National Highway Authority v Shalien Masood Mughal & 5 others* [2017] eKLR, *Veronica Njeri Waweru & 4 others v City Council of Nairobi & 2 others* [2012] eKLR and ELC Petition No 11 of 2017, *Unilever Tea Kenya Limited v National Land Commission* [unreported].
32. Counsel argued that the 1st Defendant having complied with the law by remitting the compensation sum to the 2nd Defendant, they cannot be compelled to pay the Plaintiff. On the procedure for compulsory acquisition, counsel relied on the case of *Patrick Musimba v National Land Commission & 4 others* [2016] eKLR.

2nd Defendant's Submissions

33. Counsel for the 2nd Defendant submitted that the Plaintiff was not entitled to the temporary injunction sought in the Originating Summons as they had not met the conditions for grant of temporary injunction set out in the cases of *Giella v Cassman Brown* (*supra*), *Cyanamid Co. v Ethicom Limited* [1975] All ER 504 and *Mrao Ltd v First American Bank of Kenya & 2 others* (*supra*).
34. It was contended for the 2nd Defendant that the issue of compulsory acquisition was not in dispute, what was in dispute is the person entitled to compensation as between the Plaintiff and the Interested Party and that that dispute has led to the withholding of the compensation funds by the 2nd Defendant.
35. Counsel argued that by dint of Section 115 (c) of the *Land Act*, the 2nd Defendant acted within the law by withholding payment of the compensation sum until the question of ownership of the suit property is determined. Counsel denied the Plaintiff's claim that the 2nd Defendant had infringed on the Plaintiff's rights.
36. It was further argued that the project is of great public interest and granting injunction would prejudice the public. Reliance was placed in the cases of *Kenya National Highway Authority v Shalien Masood Mughal & 5 others* (*supra*) and ELC Petition No 11 of 2017 *Unilever Tea Kenya Limited v National Land Commission* (unreported), for the proposition that public interest override private claims.
37. Counsel also submitted that he who comes to equity must come with clean hands. Counsel pointed out that the Plaintiff failed to disclose that Nairobi HC OS No 37 of 2013 which challenged ownership



of the suit property was pending. Counsel relied on the case of *Showind Industries v Guardian Bank Limited & another* [2002] 1 EA 284, to buttress the argument that equity demands material disclosure.

38. Counsel maintained that once the dispute as to the rightful beneficiaries is determined, the compensation funds will be remitted to the rightful party and that failure to remit the funds was occasioned by the pending dispute between the Director of the Plaintiff and the Interested Party in respect of the suit property.

Interested Party's Submissions

39. Counsel for the Interested Party submitted that the Interested P was a former wife of MK who is the majority shareholder of the Plaintiff and that the suit property was acquired jointly between the Interested Party and MK during the subsistence of their marriage, but that the property was secretly transferred to the Plaintiff. It was also submitted for the Interested Party that the suit property is the subject matter in Nairobi HC OS No 37 of 2013 and that the Plaintiff failed to disclose to this court that it is the Interested Party who placed a caveat against the release of the compensation funds and also failed to include her in this suit.
40. Counsel pointed out that it was not in dispute that the Interested Party and MK were married and later divorced. Further, that the Interested P by letter dated January 13, 2004 from [particulars withheld] Developing Company demonstrated that the suit property was bought in 2004 and that she contributed towards the purchase of the same. Counsel submitted that in view of the above, it follows that the suit property was matrimonial property which was irregularly transferred to the Plaintiff. Reliance was placed on Section 6 of the *Matrimonial Property Act*, the case of *Mugo Muiru Investments Limited v EWB & 2 others* [2017] eKLR and *NM v DM* [2018] eKLR.
41. Counsel argued that this suit should be stayed pending hearing and determination of Nairobi HC OS No XX of 2013. Counsel argued that there is a pending suit earlier filed in respect of the suit property which is Nairobi HCC OS No XX of 2013 and that therefore this matter is sub judice. Counsel argued that the delay in that matter was occasioned by matters beyond the control of the Interested Party. Therefore they sought for stay of this matter pending determination of the matrimonial cause or in the alternative dismissal of this suit.

Analysis and Determination

42. I have carefully considered the Originating Summons, the replying affidavits, annexures thereto and the submissions filed by the parties. In my considered view, the issues that arise for determination are;
- a. Whether the Defendants should be compelled to pay the Plaintiff the sum of Kshs 49,116,836/- plus interest at 12% per annum from the date of the award till payment in full.
 - b. Whether the Defendants are justified in withholding payment of the assessed compensation sum of Kshs 49,116,836/- to the Plaintiff.
43. Article 40 of the *Constitution* 2010, protects the right to own and acquire property in any part of Kenya and specifically provides that no one will be deprived of their property by the state unless the deprivation results in acquisition of land in accordance to Chapter Five of the *Constitution* or is for a public purpose and is done in accordance with the *Constitution* and any Act of Parliament that;
- (i) requires prompt payment in full, of just compensation to the person; and
 - (ii) allows any person who has an interest in or right over that property a right of access to a court of law.



44. Essentially therefore, deprivation of property by the state which is generally manifest as compulsory acquisition has to be accompanied by prompt, full and just compensation, as provided in the Constitution and the Land Act.
45. In the case of Attorney General v Zinj Limited [Petition 1 of 2020] [2021] KESC 23 (KLR) (CIV) (3 December 2021), the Supreme Court of Kenya held as follows;
28. It follows that any compulsory acquisition process ought to have commenced with a requisite Notice to the Respondent, and any other persons claiming an interest in the land, the public purpose for which the land was to be acquired, ought to have been clearly stated. Most critically, the resultant acquisition ought to have been attended with prompt payment in full, of a just compensation to the Respondent.
46. The process for compulsory acquisition has been provided for in Sections 107 to 131 (Part VIII) of the Land Act. Section 107 of the Act provides that whenever there is need for either the County or National Government to acquire land, the Cabinet Secretary or the County Executive Committee member makes a request for the acquisition of the land to the National Land Commission. Where the Commission establishes that the request meets the requirements in Article 40 (3) of the Constitution, the Commission ensures the land in question is mapped out and valued and ensure the acquiring authority has identified the number and register of the persons in actual occupation of the land and establish the time they have uninterruptedly occupied the land or their ownership interest therein. The commission then publishes in the Gazette the intention to acquire the land. Section 112 of the Act provides that 30 days upon publishing of the Notice of intention to acquire land, an inquiry date is set to hear matters of proprietary and claims for compensation by persons interested in the land, and thereafter the inquiry is done. Section 111 provides that where the land is compulsorily acquired, just compensation must be paid in full to all persons whose interests in the land have been determined.
47. In the instant case, there is no dispute that the owner of the suit property is entitled to compensation in the sum assessed by the 2nd Defendant. What is in dispute is the ownership of the suit property as the Interested Party has stated that the suit property was jointly acquired in 2004 by herself and one MK, during the subsistence of their marriage, and that the latter is the majority shareholder of the Plaintiff. The Plaintiff has not challenged the marriage aforesaid. The question of whether the Interested Party contributed to the purchase of the suit property is a question pending determination before the family court in Nairobi vide HC OS No 37 of 2019. The Interested Party has shown that she raised objection to the payment of the compensation sum to the Plaintiff in 2018 vide her various letters, and she maintains that unless the matrimonial property dispute is determined, the Plaintiff should not be paid the compensation funds.
48. The Defendants agree with the Interested Party's position that unless the question of ownership is determined in Nairobi HC OS No37 of 2013, they cannot pay the compensation sum to the Plaintiff. They rely on Section 115 (c) of the Land Act to contend that there is a dispute on the sharing of the compensation funds between the persons interested in the suit property and therefore they cannot pay before that dispute is resolved.
49. Section 115 of the Land Act provides as follows;
- (1) After notice of an award has been served on all the persons determined to be interested in the land, the Commission shall promptly pay compensation in accordance with the award to the persons entitled thereunder, except in a case where –



- (a)
- (b)
- (c) there is a dispute as to the right of the persons entitled to receive the compensation or as to the shares in which the compensation is to be paid.

50. It is therefore clear that when there exists a dispute on who should be paid compensation or in respect of the shares of the persons claiming compensation, then the National Land Commission is not obligated to pay until the dispute is determined.
51. The fact that there is a dispute regarding ownership of the suit property vide Nairobi HC OS No37 of 2013 is not disputed. The Defendants agree that whoever owns the suit property is entitled to compensation but contend that ownership of the suit property is disputed and therefore that they can only pay the compensation once that dispute is settled.
52. In my considered view, as there is a claim by the Interested Party that she owns a share of the suit property which claim is still pending hearing and determination vide Nairobi HC OS NoXX of 2013, by dint of Section 115 (c) of the Land Act, the 2nd Defendant is justified and within their statutory mandate to withhold payment of the assessed compensation until the question of whether or not the Interested Party owns a share of the suit property is determined.
53. It is clear that as early as 2018, the Interested Party by herself and through her advocate raised objection on the payment of the compensation to the Plaintiff, yet the Plaintiff failed to disclose such objection and or join the Interested Party to this suit. The Interested Party also demonstrated that she obtained an injunction restraining Mr Mutuku Kilewe from dealing in any way with the suit property vide the Civil Suit No XX of 2013 (OS) yet no disclosure was made concerning this order by the Plaintiff. This clearly demonstrates that the Plaintiff has concealed material facts and that he filed this suit in bad faith and with intention to circumvent the pending suit and contrary to Section 115 (c) of the Land Act.
54. In the premises, I find and hold that the Defendants are justified in holding the compensation funds until the determination of Nairobi HC OS No37 of 2013. I therefore find no merit in the Plaintiff's claim and I hereby dismiss the suit with costs to the Defendants and the Interested Party. As the Defendants have shown that they have to complete the project in time to arrest detrimental contractual consequences which will be prejudicial to the tax payer, and having sought to be allowed to proceed with the project, I order that they take vacant possession of the suit property.
55. Orders accordingly.

DATED, SIGNED AND DELIVERED AT MACHAKOS VIRTUALLY THIS 22ND DAY OF FEBRUARY 2023 THROUGH MICROSOFT TEAMS VIDEO CONFERENCING PLATFORM

A. NYUKURI

JUDGE

In the presence of;

No appearance for the Plaintiff

No appearance for the Defendants

No appearance for the Interested Party

Josephine – Court Assistant

