



**Odira v Ouko & 2 others (Environment & Land Case 121 of 2018)
[2023] KEELC 18508 (KLR) (16 March 2023) (Judgment)**

Neutral citation: [2023] KEELC 18508 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 121 OF 2018
LC KOMINGOI, J
MARCH 16, 2023**

BETWEEN

WILLY ODIRA PLAINTIFF

AND

JOEL OUKO 1ST DEFENDANT

MOSES NYANKURU BOSIRE 2ND DEFENDANT

FRANCIS MOGAKA 3RD DEFENDANT

JUDGMENT

1. By a plaint dated 9th March 2018, the Plaintiff prays for judgment against the Defendants for;
 - a. A declaration that the shanties and structures erected on the road reserve Mugumoini-Langa'ta are illegal.
 - b. A declaration that the 1st, 2nd and 3rd Defendants have no proprietary right over the said reserve recognizable in law.
 - c. An order of mandatory injunction directing the 1st, 2nd and 3rd Defendants to stop putting up structures and to demolish the shanties erected on the said reserve.
 - d. Further and without prejudice to the foregoing, orders of eviction of the 1st, 2nd and 3rd Defendants from the road reserve to be executed by Officer Commanding Lang'ata Police Station; and
 - e. Costs of the suit.
2. It is the Plaintiff's case that at all material times relevant to this suit, he was the duly registered and/or beneficial owner of all that piece of land situate at Mugumoini area in Lang'ata within the County of Nairobi and more particularly described as LR No 209/16037 where he lives with his family.



- He averred that the property is situate on a well-planned area with access roads and access facilities including the National Library.
3. He contended that the 1st, 2nd and 3rd Defendants have now unlawfully erected temporary housing structures and shanties on the road reserve leading to the suit property thereby limiting his access and the access of other adjacent land owners to their respective residences .He contended that numerous complaints have been lodged with the Commissioner of Lands and the 4th Defendant on the issue of the illegal closure of the road reserve but the nuisance continues unabated.
 4. He also averred that the Commissioner of Lands wrote various letters to the agents of the 4th Defendant vide letters to the Deputy Commissioner, Lang’ata Sub-County dated 18th September 2017 and the Chief Officer, infrastructure, Roads and Public works dated 21st of November,2017 to resolve the matter but no steps have been taken to sort out the matter.
 5. He contended that the 4th Defendant has condoned, encouraged or neglected its responsibilities thereby permitting the continued blockage of the road by the 1st to 3rd Defendants.
 6. The 1st- 3rd Defendants failed to enter appearance and/or file defences despite being served.
 7. The 4th Defendant entered appearance vide the Memorandum of Appearance dated 9th April 2018 filed by Kounah & Company Advocates but failed to file a defence. It also filed the notice of motion dated 8th July 2019 seeking that the 4th Defendant be struck out of the suit on the 29th July 2020, this court allowed the 4th defendant’s notice of motion. The 4th Defendant then ceased to be a party in this suit.

Evidence of the Plaintiff

8. PW1, Willy Odira the Plaintiff, testified on 25th April 2022. He told the court that he has built his residence on his land known as LR No 209/16037 situated in Lang’ata. He produced a letter of allotment dated 25th June 1996, rates receipts from the Ministry of Lands and a registry index map. It was his testimony that the 1st-3rd Defendants constructed structures on a road leading to his home and as a result, he cannot access his home.
9. He stated that he reported to the Ministry of Lands who wrote a letter to Nairobi City Council whose officers went to the site but did nothing. He further testified that he also complained to the National Land Commission and the County Government of Nairobi as well but they have done nothing to date.
10. It was also his testimony that the Defendants have also encroached on the public land leading to the National Library Services. He prayed that the public road leading to his home be restored to its state by demolishing the permanent structures erected on the road.
11. At the close of his oral testimony, the Plaintiff tendered final written submissions.

The Plaintiff’s Submissions

12. They are dated 6th June 2022. Relying on the case of Trust Bank Limited v Paramount Universal Bank Limited & 2 others, Counsel for the Plaintiff submitted that since the 1st Defendants neither filed a defence to rebut the Plaintiff’s claim nor called a witness, the Plaintiff’s evidence is uncontroverted. He urged the court to find that the Plaintiff has proved his claim that the 1st to 3rd Defendants have blocked access to his property. He relied on the case of [*Fredrick Otieno Obonyo v Gilbert Otieno Nyanjom & another*](#) [2018] eKLR.
13. It was also Counsel’s submission that by the 4th Defendant’s actions of allowing the 1st to 3rd Defendants to build on public roads within the city thereby blocking the Plaintiff’s access to his home, the 4th



- Defendant is guilty of dereliction of duty. He relied on the case of *Mobamed Said Shimasy v Hmaid Mahamed Abdulkadir & another* [2009] eKLR.
14. Counsel also submitted that blocking the Plaintiff's access to his home by erecting illegal structures on the road denies the Plaintiff the right to peaceful and quiet enjoyment of his property and devaluates it.
 15. I have considered the pleadings and the evidence on record. I have also considered the written submissions and the authorities cited. the issues for determination are:-
 - i. Whether the 1st, 2nd and 3rd Defendants have erected illegal developments on the road reserve leading to the Plaintiff's property.
 - ii. Is the Plaintiff entitled to the reliefs sought?
 - iii. Who should bear costs of this suit?
 16. The Plaintiff's case is that he 1st, 2nd and 3rd Defendants have constructed shanties on a road reserve leading to his residential property described as LR No 209/16037. He accuses the 4th Defendant of abdicating its duty by its actions of allowing the illegal construction. The Defendants failed to enter their respective defences despite being served.
 17. In the case of *Kariuki Gathitu v Attorney General* [2013] eKLR, the Court stated;

“It is now trite that although a party alleging a fact has the onus of proof of that fact, the opposing party is at the very least expected to file a response to those allegations of fact. Where such a party actually appears in the proceedings but neither in pleadings nor in oral evidence does he answer to those facts, then the court can only but take it that those facts are uncontested”.
 18. The Plaintiff has proved ownership to the suit land. He also proved that there are developments erected around the road reserve leading to the suit property. The 1st, 2nd and 3rd Defendants have not justified the said developments erected on the road reserve. Their actions are therefore an interference of the plaintiff's right to enjoy his property.
 19. The 4th Defendant failed to justify that the developments were in compliance with the *Physical and Land Use Planning Act*. Thus the orders sought are for granting.
 20. I find that the Plaintiff's case has not been controverted. I also find that he has proved his case against the Defendants on a balance of probabilities.
 21. Accordingly, judgment is entered for the Plaintiff as against the Defendants as follows:-
 - a. That a declaration is hereby issued that the shanties and structures erected on the road reserve Mugumoni Langata are illegal.
 - b. That a declaration is hereby issued that the 1st, 2nd and 3rd Defendants have no proprietary right over the said road reserve recognizable in law.
 - c. That an order of mandatory injunction is hereby issued directing that the 1st, 2nd and 3rd Defendants to demolish the structures erected on the said road reserve.
 - d. That the 1st, 2nd and 3rd Defendants are hereby directed to vacate the said road reserve within sixty (60) days from the date of this judgment failure to which the Officer Commanding Langata Police Station do oversee their eviction from the said road reserve.
 - e. That costs of this suit be borne by the 1st, 2nd and 3rd Defendants.



It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUARLLY AT KAJIADO THIS 16TH DAY OF MARCH 2023.

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L. KOMINGOI

JUDGE

In the presence of:-

No appearance for the Plaintiff

No appearance for the Defendants

Mutisya- Court Assistant

