



**Barmasai v Rono & 9 others (Environment & Land Case
89 of 2019) [2023] KEELC 17451 (KLR) (18 May 2023) (Judgment)**

Neutral citation: [2023] KEELC 17451 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ENVIRONMENT & LAND CASE 89 OF 2019**

EO OBAGA, J

MAY 18, 2023

BETWEEN

WILLIAM KANGOGO BARMASAI PLAINTIFF

AND

CATHERINE RONO 1ST RESPONDENT

KIPKOECH RONO 2ND RESPONDENT

GIDEON KIPTOO RONO 3RD RESPONDENT

MAGDALENE CHEPCHIRCHIR RONO 4TH RESPONDENT

RITA CHELIMO RONO 5TH RESPONDENT

KIPNGETICH RONO 6TH RESPONDENT

ONESMUS KIPLAGAT RONO 7TH RESPONDENT

KIMUTAI RONO 8TH RESPONDENT

LAND REGISTRAR, UASIN GISHU COUNTY 9TH RESPONDENT

COUNTY LAND SURVEYOR, UASIN GISHU COUNTY 10TH RESPONDENT

JUDGMENT

1. By an amended plaint dated January 12, 2022, the plaintiff sought the following reliefs: -
 - a. A declaration that there exists access road into the Plaintiff's parcel of land known as Uasin Gishu/Elgeyo Border/260;
 - a. (a) The reinstatement of access road as per paragraph 24 of the amended plaint.



- b. (b)The County Land Registrar be ordered to rectify the RIM register by placing access road on the rightful position.
 - a. (c) The County surveyor be compelled to amend the RIM to reflect the ground position and original development plan.
 - a. (d) a declaration order that the plaintiff is entitled by law to the access road.
 - b. A mandatory injunction compelling the Defendant jointly and severally by themselves their servants, agents, employees, proxies or any other person acting on their behalf to forthwith open the road access into the Plaintiff's parcel of land.
 - c. An order of permanent injunction restraining the Defendant jointly and severally by themselves, their servants, agents, employees, proxies or any other person acting on behalf, from trespassing, cultivating, and/or in any manner whatsoever dealing with land parcel No Uasin Gishu/Elgeyo Border/260.
 - f) General damages
 - g) Costs of the suit and interests.
 - h) Any other relief that this Honorable Court may deem fit.
2. The 2nd to 8th Defendants filed an amended defence and raised a counter-claim dated March 7, 2022 in which they sought the following reliefs: -
 - a. General damages, aggravated damages and exemplary damages.
 - b. Restitution of the Plaintiff's parcel to its original state.
 - c. Costs and interest of the suit.
 - d. Any other relief this Honourable court may deem fit and just to grant.
 3. The Plaintiff is the administrator of the Estate of the late Barmasai Bosiom who was the registered owner of LR No Uasin Gishu/Elgeyo Border/260. The 6th Defendant is the administrator of the Estate of Joseph Rotich Rono Lelei who was the registered owner of LR No Uasin Gishu/Elgeyo Border/261.
 4. The two properties are adjacent to e each other. The dispute resulting into the filing of this suit began in or around March 2019 over a road of access which the Plaintiff uses to access his land. The access road had been existing and was being used by the family of the Plaintiff since the 1960's.
 5. The Defendants closed the access road prompting the Plaintiff to move to court where a court order was issued compelling the Defendants to open the road of access. It is the Plaintiff's case that the access road has been in existence since the 1960's and that the Defendants' closure of the same is not justified.
 6. The Plaintiff testified that the Defendants cut down the trees which were along the disputed access road for which he claims compensation. He stated that the trees were planted by his late father.
 7. The Defendants on the other hand state that the disputed access road does not exist and that the Plaintiff's family should access their land through a six-meter stretch at the lower part of their land.
 8. The parties herein filed written submissions. The plaintiff filed his submissions on March 16, 2023. The 2nd to 8th Defendants filed their submissions on March 23, 2023. The 9th and 10th Defendants filed their submissions on March 29, 2023.



9. I have carefully gone through the evidence of the plaintiff and that of the Defendants. I have also gone through the submissions filed. The 1st Defendant died during the pendency of this case. The parties herein had agreed on the issues for determination. This is whether there exists a road of access on the disputed area and whether the parties are entitled to the reliefs sought.
10. The court ordered that the County surveyor do visit the two parcels owned by the family of the Plaintiff and the Defendants and make a report. The county surveyor did visit the ground and prepared a report. The county surveyor observed that according to the Registry Index Map (RIM) there is no access road to parcel No 260 which is owned by the family of the plaintiff. The surveyor however observed that parcel No 260 could be accessed on the lower part which borders parcel 261 and 242.
11. The county Surveyor recommended that there be an amendment to the RIM to indicate that the access road to parcel 260 should be at the stretch measuring about 7 metres at the intersection of parcel 260, 261 and 242.
12. The Plaintiff commissioned their own surveyor who prepared a report which shows that there is one access road in the disputed area. The surveyor observed that though this access road is not on the RIM, the map from the settlement for Elgeyo Border Settlement Scheme shows that the access road should be on the disputed area. The surveyor recommended that the RIM be amended to indicate that this access road should be on the disputed area.
13. The court visited the two parcels. It was observed that the disputed access road passes through the land owned by the Defendants. The court further observed that parcel No 260 owned by the Plaintiff's family has a stretch measuring about 7 metres through which the plaintiff's family can access their land.
14. Though the Plaintiff and his witnesses had claimed that there is a water pan on the intersection at parcel 260, 261 and 264, the court observed that there was no water and the plaintiff's family could easily access their land through the 7meter stretch which touches the main road.
15. The Plaintiff's family have constructed their houses on the upper side of their land which is easily accessible through the disputed access road. When the court was at the scene, it was claimed by the Plaintiff's family that if the access road was to be created at the intersection of parcel 260, 261 and 242, it will inconvenience the Plaintiff's family.
16. It is common sense that when survey is being done, each parcel must have an access to the road. As the position stands, there is an access to parcel 260 at the intersection of parcel 260, 261 and 242. The mere fact that the Plaintiff's family have been using the disputed access road for a long time is no justification for the same to be declared as being the official access road. If the court was to order that the RIM be amended to indicate that parcel No 260 should be accessed through the disputed area, the effect of this would reduce the Defendant's land.
17. The Plaintiff called an officer from the Settlement Office Eldoret who testified that the development map which the office sourced from Nairobi shows that the access to parcel 260 is on the disputed area. He stated that the Plaintiff cannot access parcels 260 because the area where his land touches the main road is swampy. As I have said hereinabove, the court visited the disputed area and went to the intersection of plot 260, 261 and 242. The area was not swampy as claimed by the Settlement officer. The Plaintiff's family could easily access his land through the 7 meter access at the intersection.
18. The RIM is the final authority and comes after a development plan. All the parties are in agreement that there was omission during the preparation of the RIM. The RIM should be amended to indicate that the access to parcel No. 260 is at the intersection of plot 260, 261 and 242. There is therefore no access road at the disputed area.



19. The plaintiff sought special damages of 176, 723 being the value of the destroyed trees and general damages of Kshs 500,000/= There is no basis for the award of either special or general damages. The trees were on the land belonging to the Defendants and they cannot be condemned to pay for what was planted on their land.
20. The Defendants also claimed for general damages of Kshs 5,000,000/= for trespass. It is important to note that it is the Defendants who had allowed the plaintiffs family to access their land for a long period of time through the disputed area. There is therefore no basis for award of damages for trespass. The Defendants' counterclaim is actually misconceived.
21. From the above analysis, I find that the Plaintiff and the Defendants have failed to prove their respective claims. The Plaintiff's claim as well as the Defendants counter-claim are hereby dismissed. Each party should bear their own costs. The Registry Index Map should be amended to show that the access road to the Plaintiff's land is at the intersection of parcel Nos Uasin Gishu/Elgeyo Border/260, 261 and 242.

DATED, SIGNED AND DELIVERED AT ELDORET ON THIS 18TH DAY OF MAY, 2023.

E. O. OBAGA

JUDGE

In the virtual presence of;

Ms. Chelimo for Mr. Yego for Plaintiff.

Ms. Cheruiyot for Mr. Odongo for 9th and 10th Defendants.

Court Assistant –Laban

E. O. OBAGA

JUDGE

18th MAY, 2023

