



Aduol v Mbero & another; Bonga & 4 others (Interested Parties) (Environmental and Land Originating Summons E016 of 2024) [2025] KEELC 1273 (KLR) (13 March 2025) (Judgment)

Neutral citation: [2025] KEELC 1273 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISUMU
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E016 OF 2024
SO OKONG'O, J
MARCH 13, 2025**

BETWEEN

AMOS OTIENO ADUOL PLAINTIFF

AND

JENIFFER MBERO 1ST RESPONDENT

BERNARD OKOTH 2ND RESPONDENT

AND

CHARLES OTIENO BONGA INTERESTED PARTY

JOHN OTIENO MIGENI INTERESTED PARTY

ELIUD OBIERO OSODO INTERESTED PARTY

HIPPIUS OCHIENG OBIERO INTERESTED PARTY

COUNTY GOVERNMENT OF KISUMU INTERESTED PARTY

JUDGMENT

1. The Applicant brought this suit against the Respondents by way of an Originating Summons dated 26th July 2024 seeking the following orders;
 - a. That the court does issue an access order in respect of Title No. Kisumu/Kasule/7383(Plot No. 7383) for the benefit of the Applicant's landlocked land, Title No. Kisumu/Kasule/5775 (Plot No. 5775) granting the Applicant reasonable access to his property as set out in the map provided by the Ministry of Lands;
 - b. That the 1st Respondent who is the registered owner of Plot No. 7383 and the 2nd Respondent who is currently occupying the said parcel of land to pay to the Applicant the rental income



he had forgone owing to his inability to let out his parcel of land, Plot No. 5775 from 2014 to the date of determination of the application at the rate of Kshs. 28,000/- per month; and

- c. That the 1st and 2nd Respondents do pay the costs of the suit.
2. The Originating Summons that was brought under Section 140 of the Land Act 2012 was supported by an affidavit sworn by the Applicant on 26th July 2024. The Applicant averred that he purchased Plot No. 5775 on 10th October 2012 and thereafter the 1st Respondent who owned Plot No. 7383 occupied by the 2nd Defendant who is her son constructed a residential block on Plot No. 7383 which extended to the official road of access set out in the map provided by the Ministry of Lands. The Applicant averred that the said construction by the 1st and 2nd Respondents completely blocked the access road to Plot No. 5775 owned by the Applicant thereby rendering it landlocked. The Applicant averred that despite several pleas to the 1st and 2nd Respondents to remove part of their building blocking the access road, they had refused to do so leaving the Applicant with no alternative but to apply to the court for an access order in respect of Plot No. 7383 for the benefit of the landlocked Plot No. 5775.
3. The Applicant averred that he engaged a licensed surveyor, N.O.Ongwae who visited the area where the two parcels of land are located and conducted a survey to ascertain the boundaries of the parcels of land adjacent to Plot No. 5775 and the public access road designated by the Ministry of Lands. The Applicant averred that N.O.Ongwae prepared a report dated 23rd November 2023, which included detailed drawings of the properties adjacent to the public access road. The Applicant averred that the said drawings showed that the 1st and 2nd Respondents' building on Plot No. 7383 had extended beyond the plot to the public road of access. The Applicant averred that the Kisumu County Government surveyor, David Obare, also came to the site on 28th February 2024 and conducted a survey in the presence of the parties and other residents of the area served by the public road of access in dispute. The Applicant averred that David Obare also prepared a report dated 11th April 2024 in which he concurred with the findings of N.O.Ongwae. The Applicant averred that after the second survey, the second surveyor, the area chief and a representative of the National Land Commission had a meeting with the parties to come up with an amicable solution to the problem. The Applicant averred that a proposal was made for an alternative road of access to be created through the parcel of land owned by the 1st Respondent and the land occupied by the 3rd and 4th Interested Parties to avoid the demolition of the structures put up by the 1st and 2nd Respondents on the public access road. The Applicant averred that the said suggestion that was made by the surveyor seemed to have been accepted by the parties concerned and what remained was the implementation of the same on the ground. The Applicant averred that the 1st and 2nd Respondents, and the 3rd and 4th Interested Parties refused to co-operate in the implementation of the agreement with the result that the Applicant's parcel of land remained landlocked.
4. The Applicant averred that due to this turn of events, he asked the National Land Commission to exercise its statutory mandate and open the public access road. The Applicant averred that another meeting was held on 24th April 2024 attended by a representative of the National Land Commission, the Kisumu County Government surveyor and the Applicant in which it was agreed that the agreement on the alternative road of access reached on 28th February 2024 be implemented. The Applicant averred that on 24th April 2024, an alternative access road was physically created and beacons placed through Plot No. 7383 and Plot No. 7382, occupied by the Respondents and the 3rd and 4th Interested Parties, respectively. The Applicant averred that this was done to avoid bringing down the structures that the 1st and 2nd Respondents had put up on the access road.
5. The Applicant averred that after this new road was marked, he proceeded to grade the same with murrum to ease access to his land, Plot No. 5775. The Applicant averred that at the same time, he



also commenced additional construction work on his land. The Applicant averred that as vehicles were moving to and from his land, Plot No. 5775, delivering construction materials, the Respondents and the 3rd and 4th Interested Parties on whose land the public access road had been moved/relocated started to block the Applicant's access to his land through the new road. The Applicant averred that the road was blocked, leaving only a footpath which could not be used by vehicles. The Applicant averred that he was forced to stop the construction he had commenced on his land since the construction materials could not be delivered to his premises. The Applicant averred that he suffered a loss of Kshs. 150,000/- being the amount he spent in purchasing the murrum.

6. The Applicant averred that in 2013, he constructed a residential block on Plot No. 5775, from which he could earn a rental income of Kshs. 28,000/- per month. The Applicant averred that he was unable to get a tenant for the premises because the property was landlocked and was only accessible on foot. The Applicant averred that his total loss of rental income from 2014 came to Kshs. 3,696,000/-.
7. The application was served upon the Respondents and the Interested Parties. The Respondents appointed a firm of advocates who entered appearance on their behalf. When the Originating Summons came up for directions on 15th October 2024, the Respondents asked for time to respond to the application. The court granted the Respondents' advocates 7 days to file and serve their response to the application. The court also directed that the Originating Summons be heard by way of affidavit evidence and written submissions and gave timelines within which each party was to file its submissions. The Respondent did not respond to the Originating Summons, and none of the parties filed submissions. There is none in the CTS.
8. I have considered the Applicant's Originating Summons together with the supporting affidavit. As I mentioned earlier, the Originating Summons was brought principally under Section 140 of the [Land Act 2012](#), which provides as follows:

“ 140. Access order

- (1) An owner of landlocked land may apply in the prescribed form to a court for an access order, granting reasonable access to that land.
- (2) A copy of the application shall be served on—
 - (a) the owners of each piece of land adjoining the landlocked land;
 - (b) any person claiming an interest in any such piece of land of whom the applicant has actual notice;
 - (c) the county government having jurisdiction in the area where the landlocked land is located;
 - (d) any other person occupying or having an interest in land which in the opinion of the court may be affected by the granting of the application.
- (3) The court, after hearing the applicant and any person served with an application under subsection (2) may make an access order in respect of any other piece of land, the owner of which was served with a copy of the application under subsection (2), for the benefit of the landlocked land.



- (4) In considering whether to grant an access order, the court shall consider—
- (a) the nature and quality of the access, if any, to the landlocked land when the applicant first occupied the land;
 - (b) the circumstances in which the land became landlocked;
 - (c) the nature and conduct of the negotiations, if any, between the owners of the landlocked land and any adjoining or other land with respect to any attempt by the owner of the landlocked land to obtain an easement from one or more owners of the adjoining or other land;
 - (d) the hardship that may be caused to the applicant by the refusal of the access order, in comparison to the hardship that may be caused to any other person the making of the order;
 - (e) the purposes for which access is or may be required; and
 - (f) any other matter that appears to the court to be relevant.
- (5) An access order may be made subject to any conditions including —
- (a) the period for which the access order is to be made;
 - (b) the payment of reasonable compensation by the applicant to any other person;
 - (c) the allocation of the costs of any work necessary to give effect to the order between the applicant and any other person;
 - (d) the fencing of any land and the upkeep and maintenance of any such fence;
 - (e) the upkeep and maintenance of any land over which the access order has been granted;
 - (f) the execution of any instrument or the completion of any prescribed form or the doing of any other thing necessary to give effect to the order;
 - (g) any conditions set out in subsection (4) which in the opinion of the court are applicable to an access order; and
 - (h) any other relevant matter.



(6) An access order made under this section shall be deemed to have all the characteristics and incidents of an easement and the land over which it has been granted shall be deemed to be the servient land and landlocked land shall be deemed to be the dominant land in respect of that easement.”

9. According to Black’s Law Dictionary, 10th Edition, page 1010, the word, landlocked, when used in reference to land, means:

“Surrounded by land, with no way to get in or out except by crossing the land of another.”

10. In my view, a landlocked parcel of land has no lawful access to a public road. Given that description, does the parcel of land known as Title No. Kisumu/ Kasule/5775 (Plot No. 5775) qualify as landlocked? My answer is in the negative. From the evidence before me, Plot No. 5775 is a subdivision of Title No. Kisumu/Kasule/5335. When Title No. Kisumu/Kasule/5335 was subdivided to give rise to Title No. Kisumu/Kasule/5774 and Title No. Kisumu/Kasule/5775 (Plot No. 5775), a public road for accessing the two parcels of land, was provided for in the mutation form. N.O.Ongwae of Trinity Geospatial Ltd. and David M. Obare agree in their survey reports dated 23rd November 2023 and 11th April 2024, respectively, that a road for accessing Plot No. 5775 exists on the Registry Index Map (RIM) for Kisumu Kasule Registration Section. The access road can be seen in the RIM annexed to the valuation report by ADD Property Consultants dated 24th July 2024.

11. The problem facing the Applicant, in my view, is not lack of access road to his parcel of land but rather the encroachment on that access by the Respondents who have put up buildings on the same. Encroachment on a public road or a road reserve is not an issue that the court can deal with under Section 140 of the *Land Act* 2012. The Applicant already has a legal road of access to his parcel of land. The court does not need to make provision for reasonable access to Plot No. 5775. What the Applicant should be seeking is the removal of the obstructions from the said access road and the opening of the road by those who have blocked it. These are reliefs that the Applicant can obtain in a normal civil suit

12. For the foregoing reasons, I find no merit in Applicant’s Originating Summons dated 26th July 2024. The same is dismissed. Each party shall bear its costs of the suit.

DELIVERED AND DATED AT KISUMU ON THIS 13TH DAY OF MARCH 2025

S. OKONG’O

JUDGE

Judgment delivered through Microsoft Teams Video Conferencing Platform in the presence of:

Mr. Odongo for the Applicant

N/A for the Respondents

N/A for the Interested Parties

Ms. J.Omondi-Court Assistant

