



**Ombogo v Ombati & 3 others (Environment & Land Case 100 of 2021)
[2023] KEELC 22356 (KLR) (20 December 2023) (Judgment)**

Neutral citation: [2023] KEELC 22356 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYAMIRA
ENVIRONMENT & LAND CASE 100 OF 2021
JM KAMAU, J
DECEMBER 20, 2023**

BETWEEN

CARREN ONGIGE OMBOGO PLAINTIFF

AND

JOHN NYAGECHI OMBATI 1ST DEFENDANT

JONES NYAGECHI 2ND DEFENDANT

BENARD NYAGECHI 3RD DEFENDANT

DENNIS NYAGECHI 4TH DEFENDANT

JUDGMENT

1. The Plaintiff claims that she is the widow of one James Ombogo Ombati who died in 1973 having been the owner of the Parcel of land registration No. North Mugirango/Boisanga/232. She is also the administratrix of James Ombogo Ombati's Estate. The 1st Defendant is her brother in law and the 2nd, 3rd and 4th Defendants are her late husband's nephews. The claim is that the Defendants felled down 310 trees worth Kshs. 345,719.50 from the suit premises on 4/12/2008 and she now prays for special damages for the same, an order of eviction of the Defendants from the suit land and a permanent injunction restraining the Defendants from trespassing on the suit premises. The Defendants deny the entire claim and further claim that there is a civil Appeal No. 98 of 2009. A preliminary objection on the court's jurisdiction was raised on behalf of the Defendants and the same was dismissed on 14/6/2022.
2. After 3 out of the 4 Plaintiff's witnesses testified the case did not proceed further after 23/7/2014. On 10/6/2021 parties consented that the land Registrar and County surveyor, Nyamira do visit the suit land as well as L.R. No. North Mugirango/Boisanga/2535 for purposes of establishing the common boundary between the 2 parcels of land and also find out whether there is any encroachment by either party after which the County Surveyor was to fix the boundary between the 2 parcels and both officers



file their Reports within 90 days. Each party was given liberty to involve his own private surveyor in the exercise. The land was visited by the Land Registrar and County Surveyor on 17/8/2021 and on 20/7/2022 the Land Registrar Mr. Maina reported that his Report was now ready and the same was filed on 20/7/2022 after a Court ultimatum. The Land Registrar and County Surveyor did state that the adopted boundary had been well marked by a trench which did not require any fixing but that the parties should respect the adopted boundary. A sketch was attached to the Report and I invited both parties to make their comments on the joint Report which I carefully considered. Having found as the Land Registrar and County Surveyor did that: -

“.....we noted that parties herein have restricted themselves to their respective portions of landparties have been in occupation of their respective parcels for more than ten years.....The adopted boundary is well marked by a trench as stated above. It does not require fixing

3. and in conformity with Section 26 of the [Land Registration Act](#) I made a Ruling to the effect that:

“I am satisfied that the Land Registrar and the surveyor duly exercised their mandate under the provisions of the [Land Registration Act](#), 2012. Their Report is well supported and the markings of the new boundaries accepted by all the parties..... Prayer Nos. (a) and (c) of the Plaint dated 11/5/2010 have now been determined by the Land Registrar’s Report. As to prayer Nos. (b), (d) and (e) in the plaint, evidence has to be adduced in court to prove the same and I invite the parties to lead evidence on the same.”

4. After the conclusion of the viva voce evidence, I have observed that it is clear that there has been no trespass. As to the Special Damages for the felled trees, the Exo-system conservator, Mr. Mwai Njoroge Mugo said that he did not indicate in his report the parcel number where the trees were felled, nor when the trees were cut down. He also said he could not tell how old the trees were. It was just indicated to him that they were about 15 years old. He could not tell how this age was arrived at. The acreage was also not indicated. In the absence of these details the case of the Special Damages being the value of the trees destroyed cannot be ascertained and equally under this head, the Plaintiff’s case fails. As for costs I order that each party meets his own costs.

JUDGMENT DATED, SIGNED AND DELIVERED AT NYAMIRA THIS 20TH DAY OF DECEMBER, 2023.

MUGO KAMAU

JUDGE

In the Presence of:

Ms. Ndemo for the Plaintiff

No appearance for the Defendant

