



**Kimani & 26 others v G. Issaias & Company (Kenya) (Environment & Land
Case 153 of 2018) [2025] KEELC 3174 (KLR) (8 April 2025) (Ruling)**

Neutral citation: [2025] KEELC 3174 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT & LAND CASE 153 OF 2018**

**A OMBWAYO, J
APRIL 8, 2025**

BETWEEN

KENNEDY NDUNGU KIMANI & 26 OTHERS PLAINTIFF

AND

G. ISSAIAS & COMPANY (KENYA) DEFENDANT

RULING

1. Kennedy Kimani Ndungu and 16 others have come to this court claiming to be the registered owners of various plots known as Timboroa/Chegeya Block 1 (Subukia) 150B,149B,206,382,112,321,312,313,38,89,147,281,84B,292,152,289,291,208,87,178,280. The plaintiffs alleged that as a result of the defendants said acts of trespass the plaintiffs have been hampered the enjoyment of their property and have thereby suffered loss and damages. The Plaintiffs lament that to-date they have never been compensated and/or their land which the defendants continue to trespass and have compulsorily acquired. The 2nd Defendant have made empty promises to the Plaintiffs to this end but the same has never materialized to anything and hence the need of this Honorable Court's urgent intervention. Defendants have denied liability, neglected and/ or refused damages despite a demand letter and a notice of intention to sue rendering this action necessary. That there is no other suit pending in a court of law between the Plaintiffs and the defendants on the same cause of action. The cause of action arose at Timboroa within the jurisdiction of this Honorable Court.
2. The plaintiff prays for a declaration that the interference by the Defendants with the Plaintiffs respective parcels of land is wrongful and illegal and a perpetual injunction restraining the Defendants and its servants or agents from interfering with the land as well as the Ministry of Roads and Public works or its servants or agents. General damages for trespass. Costs of this suit plus Interest.



3. The plaintiffs in the alternative pray that the 2nd Defendant be compelled to adequately compensate the Plaintiffs and/or, compulsorily acquire the part of the suit property which it continues to trespass and is illegally using as a public road.
4. The 1st defendant in the amended statement of defence dated 10th March 2023 and filed on 15th March 2023 states that he has no knowledge of trespass by the defendants and that it is the plaintiffs who have trespassed on public land. The 1st defendant avers that compulsory acquisition of land has not arisen as the defendant has not acquired any private law as the road is being done on public land.
5. The 2nd defendant filed a statement of defence denying encroachment on the plaintiffs properties.
6. The 2nd defendant states that the construction of the road is as per the existing Registry Index Map. The 2nd defendant further denies acquiring the plaintiffs property and avers that there is no need to compulsorily acquire their land.
7. When the matter came up for hearing, Kennedy Ndungu Kimani testified as PW1 that he is plaintiff herein and well versed with the facts of the case. He made his statement with the consent and authority of his co-plaintiffs. He is the owner of plot No. 150B and the same was purchased in 1981. After the purchase of the said plot, he took possession and occupied the same in the year 1989. On or about July 2002 during the repairs and resealing of the Timboroa Miteitei road which was being undertaken by the 1st defendant's company under a contract with the Ministry of Roads and Public Works its workmen and/or employees encroached and trespassed in the plaintiffs parcels of land without any justification or right whatsoever. The repairs have encroached onto their parcels of land and the same has been indicated by beacons on the land to indicate the boundary between the plots and the road. As a result of the above encroachment the plaintiffs made complaints to several offices for assistance and more specifically to the Ministry Public Works and Housing informing them of the encroachment the damage occasioned to the parcels of land lands. Even after such diligence the defendant did not give any compensation despite demand for the same.
8. They enquired and directed that the said Office investigates to ascertain if the road reserve has affected their parcels of land. Since no reply was forthcoming and no redress was accorded to the plaintiffs in respect of the encroachment they instituted suit vide Nakuru HCCC NO. 53 OF 2003 claiming ownership and praying that a perpetual injunction do issue restraining the 1st defendant and its servants, agents from interfering with the land as well as the Ministry Of Roads and Public Works or its servants or agents.
9. The defendants encroachment on the plaintiffs land led to suffering damage and hence prayer for general damages for trespass. The defendants did not adhere to any of plaintiffs' demands and since there was no other suit as between the plaintiffs and the defendants they sought the intervention of this to Honorable court. Their parcels of land have been interfered with by the proposed repairs which have up to-date not been completed. They did not encroach on to the road as claimed by the defendants but are the lawful proprietors of the plots and well within their rights to seek protection and determination of this honorable court in preserving their rights and entitlement to the suit. Mr Kennedy Ndungu Kimani further testified that the report prepared by Attic Realtors Ltd Valuers has clearly indicated that the parcel of land has not been set aside for public use or any road reserve. That sometimes in 2019, bulldozers destroyed his trees and his property. It is worth noting that the surveyor and valuer were not called to verify the statements in their report.
10. Fredrick Okanyo testified as DW1 that he is a Land Surveyor under the employment of Kenya Rural Roads Authority, the 2nd Defendant herein. He is a Registered Surveyor with the Institution of Surveyors of Kenya (ISK). He used his knowledge of survey to analyze the maps within the locality



of the suit properties and having visited the location of the suit properties hence competent to give this statement. He states that the Upgrading to Bitumen standards of Timboroa-Meteitei-Songhor-Kopere road traverses 5 counties namely Kisumu, Nandi, Uasin-Gishu, Kericho and Baringo. The suit properties fall along the Miteitei Timboroa (C641) road in Kesses constituency of Uasin Gishu County.

11. The road is currently being improved to bitumen standards by the 2nd Defendant under contract number RWC 342 and the works are being restricted to a 15 meter authentic road reserve at the disputed section. That prior to the establishment of the 2nd Defendant under the [Kenya Roads Act 2007](#), the road was maintained by the Ministry of Roads. In the year 2002, the contractor who was working on the road was one G. Issaias and Company Limited who is not a party to this suit and who was contracted by the Ministry of Roads and Transport. After the 2nd Defendant was established, it entered into a contract with M/S Sobetra Kenya Limited also not a party to this suit and who began works in the year 2017. They started receiving complaints from owners of the properties abutting the road of alleged trespass by the previous regime which resulted to their properties being earmarked for road construction. Upon visiting the site, they noted that there was no evidence of marking as alleged. No instructions had ever been issued for anyone to pave way for a road to be constructed on their private land.
12. In the year 2020, they carried out survey along the disputed section of Miteitei Timboroa (C641) road. Their main objective was to establish the extent of the authentic road reserve corridor and to determine any trespass onto private land during the construction maintenance of the road.
13. They consulted relevant cadastral Maps/Registry Index Maps and their initial findings revealed that as per FR No. 74/4 of the year 1955 the area was initially divided into 2 blocks (LR No. 8923 and LR NCI 8924) with a road passing through. The boundary and dimensions of the road were however not indicated on the cadastral plan at that time.
14. The LR No. 8923 was in the year 1989 subdivided to general boundary standard to produce Timboroa./Chegeya Block I (Subukia) Sheet I Registry Index Map which is abutted by the Lembus/Mumberes Block I (Mumberes) Sheet 1 Registry Index Map and Chegeya Settlement Scheme Sheet I Registry Index Map to the East and West respectively.
15. The Timboroa/Chegeya Block 1 (Subukia) Sheet 1 Registry Index Map shows the road together with the Plaintiff's properties as listed on paragraph 4 of the Amended Plaint.
16. During their survey exercise of the year 2020, they took ground measurements to establish the width of the road in relation to what is provided in the cadastral plans of the area. The data collected from the ground measurements was plotted to produce a topographic drawing from which the existing road reserve width was extracted. The existing road width was then compared with the authentic road reserve width as indicated in the Registry Index Maps. The result was that the road alignment on the ground concurred with the alignment as shown in the Registry Index Maps. He testified that as per the Timboroa/Chegeya Block 1 (Subukia) Sheet 1 Registry Index Map, the road reserve corridor width of the area complained of is 15 meters which is adequate for road construction and therefore there is no need to acquire any private property for road construction.
17. They also found that on the Lembus/Mumberes Block I (Mumberes) Sheet I Registry Index Map and Chegeya Settlement Scheme Sheet 1 Registry Index Map the scaled off road reserve corridor was found to be approximately 35 and 40 meters respectively.
17. He testified under oath that any road works that have ever been done in the area complained have been restricted to the 15 meter width road as provided for by the Timboroa/Chegeya Block I (Subukia)



Sheet I Registry Index Map. The Plaintiffs have therefore not suffered any loss or damage as their private land has not been interfered with.

18. He further testified that the Plaintiffs have always had control and ownership of their properties and that the 2nd Defendant has never entered upon their land nor caused any damage thereon. The plaintiffs submits that their portions of Land that were encroached into by the 2nd defendant's agents was never set aside for public use nor did the government of Kenya ever compulsorily acquire it for the purpose of constructing a road.
19. I have considered the evidence on record and rival submissions and do find that the plaintiff gave uncontroverted evidence that the defendants placed beacons on their parcels of land and marked beyond the 15 meters road reserve. On destruction of the property, the plaintiffs have only proved that the 1st plaintiff suffered actual loss as the valuation report was prepared in respect of one property thus Timboroa/ChegeyaBlock1(Subukia) 150 does not cover the other plaintiffs. The plaintiffs did not produced any evidence of the Forest officer or the Agricultural officer showing the number of the destroyed trees and crops. The plaintiffs have only proved on a balance of probability that the defendants placed beacons in their land but did not prove actual damage.
20. The defendant has given uncontroverted evidence that the sections claimed by the defendants have not been reached by the road contractor however, I do believe the plaintiffs that their parcels of land were marked for the road construction and the same were cleared for the road because dw1 did not controvert the evidence by the plaintiff that the land was cleared for the road. The defense witness DW1 only assured the court that the 15 meter width will be adhered to by the contractor. He states that when the section area reached, the contractor will abide by the 15 meters road reserve on the Registry Index map.
21. I do agree with the submissions of the plaintiff that the acts of the 2nd defendants agent of encroaching into the plaintiffs' parcels of land amounted to trespass as the plaintiffs did not give prior consent to enter and that the plaintiffs did not surrender the portions of land for road construction. Moreover, the land had not been compulsorily acquired.
22. I do find the plaintiffs have proved that their properties were marked and cleared for the construction of a road but the same has not been constructed and their property has not been acquired.
23. It is trite law that trespass is actionable per se and one does not need to prove actual damage. The principles for compensation for trespass can be found in the treatise of Harlburys Laws of England 4th Edition Vol. 45 at para 26 pg 1503, namely, the owner of the land is entitled to nominal damages where there is no actual damage occasioned to the owner by the trespass, such amounts as will compensate the owner for loss of use resulting from the damage caused by the trespass, reasonable damages are payable where the trespasser has made use of the owner's land, exemplary damages are payable where the trespassers conduct towards the owner is not only oppressive but also cynical and carried out in deliberate disregard of the right of the owner of the land with the object of making a gain by his/her unlawful conduct, general damages may be increased where the trespass is accompanied by aggravating circumstances to the detriment of the owner of the land.
24. Moreover in Duncan Nderitu Ndegwa vs. Kenya Pipeline Company limited & Another [2013] eKLR – it was held that damages payable for trespass are the amount of diminution in value or the loss of reinstatement of the land with the overriding principle being to put the claimant in the position he was in prior to the infliction of harm.



25. In Philip Ayaya Aluchio vs. Crispinus Ngayo [2014] eKLR, -It was held that the measure of damages for trespass is the difference in the value of the plaintiffs' property immediately before and immediately after the trespass or the cost of restoration whichever is less.
26. In Kiambu Dairy, Farmers Co-operative Society Limited vs. Rhoda Njeri & 30 Others [2018] eKLR, it was held that the extend of an award of compensatory damages lies in the discretion of the trial court and interference therewith on appeal must be approached with a measure of circumspection and well settled principles.
27. In Total (Kenya) Limited formerly Caltex Oil (Kenya) Limited vs. Janevans Limited [2015] eKLR, whether the claim is in contract or tort, the only damages to which an aggrieved party is entitled to is the pecuniary loss;(b) the accruing awardable damages is aimed at putting the aggrieved party into as good a position as if there had been no such breach or interference. In other words, in the position it/he/she was in with regard to the object trespassed upon before the onset of such a trespass;(c) it is meant to cushion the aggrieved party against the expenses caused as a result of the trespass and loss of benefit over the period of the duration of the trespass.
28. I do find that other than marking of the plaintiffs land for acquisition, the plaintiffs have not proved any actual damage having failed to call the surveyor and the valuer. However the act of marking and clearing the land in itself was an act of trespass and therefore the plaintiff is entitled to general damages for trespass and failure to utilize the marked and cleared portions. I do find that the plaintiffs have been unable to utilize their portions of properties for 23 years. I do grant each plaintiff general damages of ksh 300,000 for the trespass by the defendants on their parcel of land. Moreover, I do find that the plaintiffs are entitled to a permanent injunction restricting the defendants from further encroaching on their properties. I do grant a permanent injunction restraining the Defendants and its servants or agents as well as the Ministry of Roads and Public works or its servants or agents from interfering with the plaintiffs' properties. Lastly, I do award costs of the suit to the plaintiffs.

SIGNED BY: HON. JUSTICE ANTONY O. OMBWAYO

THE JUDICIARY OF KENYA.

08.04.2025.

NAKURU ENVIRONMENT AND LAND COURT

