



REPUBLIC OF KENYA



**Mathenge & 2 others v Njagi (Environment and Land Appeal  
E020 of 2023) [2025] KEELC 3325 (KLR) (8 April 2025) (Judgment)**

Neutral citation: [2025] KEELC 3325 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT EMBU  
ENVIRONMENT AND LAND APPEAL E020 OF 2023**

**AK BOR, J**

**APRIL 8, 2025**

**BETWEEN**

**MBUGI MATHENGE ..... 1<sup>ST</sup> APPELLANT**

**CHRISTOPHER KARIUKI ..... 2<sup>ND</sup> APPELLANT**

**JOHN MUCHIRI NYAGA ..... 3<sup>RD</sup> APPELLANT**

**AND**

**MUGO NJAGI ..... RESPONDENT**

**JUDGMENT**

1. The Respondent filed Kerugoya HCCC Case No. 91 of 2014 seeking a permanent injunction to restrain the Appellants from entering and carving out a road, or in any other way interfering with the land owned by the Respondent known as Ngandori/ Kirigi/2077. He also sought compensation of Kshs. 541,420/= as the value of the property which he claimed was destroyed during the road expansion. He averred that he was the registered owner of Ngandori /Kirigi/2077 measuring 3 acres which neighbours parcel number Ngandori/Kirigi/2078 belonging to the 1<sup>st</sup> Appellant.
2. His claim was that as the Member of Parliament (MP) for Manyatta Constituency, the 3<sup>rd</sup> Appellant wanted the road measuring 12 feet which passes through the Respondent's land extended by 9 feet and that sometime in November 2013, surveyors from the Embu Lands Office went to his land without his consent and erected pegs where the expanded road was to pass and encroached on his land by 7 ½ meters. He reported the matter to the Manyata Police Station but did not get any assistance. He claimed that in January 2014 the Appellants sent a tractor to his land which destroyed his crops and tress and encroached on his land.
3. He pleaded that in March 2013 about 23 youths went to his land and cut down 200 trees that he planted in the early 1960s. That they destroyed his barbed wire fence and stole the posts and they later went and carved out a meter from his land without his consent as a consequence of which he suffered



loss and damage. He added that 1<sup>st</sup> Appellant entered his land and carved out the measurements forcefully while the 2<sup>nd</sup> Appellant hired the young men who forcefully destroyed his property. He claimed that the 3<sup>rd</sup> Appellant visited the land and trespassed on it and that he threatened him and his family with dire consequences if they resisted their illegal action.

4. The Respondent urged that the procedure for compulsory acquisition was not followed and that he was not consulted regarding the encroachment on his land. He explained that the road which the Appellants were enlarging only served a few more farms as it led to a dead end about 50 meters from the Respondent's land. He sought a permanent injunction and compensation for the value of the property destroyed.
5. The Appellants filed a joint defence in which they denied that they had trespassed onto the Respondent's land and carved out a road or that they had in any way interfered with the Respondent's land.
6. Sometime in 2014, the suit was transferred to Embu and was registered as Embu ELC Case No. 197 of 2014. Vide the order made on 8/3/2018, it was transferred to Embu Chief Magistrates Court for hearing and determination and was registered as Embu CM ELC Case No. 56 of 2018. The hearing before the Magistrates' Court proceeded on 1/3/2023, 12/6/2023 and 13/7/2023 when both sides called witnesses and tendered evidence.
7. In the judgment delivered on 12/10/2023, the Learned Magistrate found that the fact that a road was carved out of the Respondent's land was uncontested and that there was no evidence to show that the Respondent was compensated for the destruction to his land. The trial court issued a permanent injunction against the Appellants to restrain them from entering, carving out a road or interfering with the Respondent's parcel of land.
8. Being aggrieved by the findings of the Learned Magistrate, the Appellants lodged this appeal seeking to have the judgment of the Learned Magistrate set aside and in its place, an order substituted for the dismissal of the suit filed by the Respondent. The Appellants faulted the Learned Magistrate for finding that they entered the Respondent's land and made a road on it yet there was not sufficient evidence to prove this. They also faulted the trial court for entering judgment against the 3<sup>rd</sup> Appellant despite finding that there was no evidence to support the involvement of the 3<sup>rd</sup> Appellant in entering and interfering with the Respondent's land. They added that the Learned Magistrate erred by failing to appreciate the fact that the road was being widened by the Kenya Rural Roads Authority (KERRA), which is a government agency and that the Appellants could not be liable to compensate the Respondent for any loss or damage. They faulted the trial court for issuing a permanent injunction against them.
9. The court directed parties to file submissions which it has considered. The Appellants submitted that the evidence adduced by the Respondent was insufficient to prove trespass and that there was no evidence linking the Appellants to the alleged destruction of the Respondent's property. They claimed that the Learned Magistrate contradicted herself when she found that the 3<sup>rd</sup> Appellant was not involved in entering the Respondent's land and interfering with it but then proceeded to enter judgment against him. They opined that holding the 3<sup>rd</sup> Appellant liable despite the lack of evidence amounted to a misapprehension of the law and the facts.
10. The Appellants reiterated that the road expansion project was a government initiative and that they did not trespass on the Respondent's land. They emphasised that the encroachment which the Respondent alleges resulted from the expansion of the road for which they should not be held liable.



They concluded that the reliefs which the trial court granted to the Respondent were unjustified and invited the court to set aside the judgment of the trial court.

11. The Respondent submitted that the evidence he presented before the trial court was sufficient to prove his claim including the evidence of Monica Karimi which was clear that the Manyatta-Gachagori Road was being extended and that the land registrar erected pegs where the road would extend to the road reserve by 2 feet. Further, she stated that the road reserve was dug by people and she told the court that the Appellants bypassed the 2 feet road reserve and entered the Respondent's land and dug too close to the Respondent's son's house which was 3 feet from the road reserve. He submitted that there was no evidence that the Appellants' actions of entering his land and carrying out the impugned activities was lawful or legally sanctioned.
12. The Respondent relied on the definition of trespass in Black's Law Dictionary and Section 3 of the *Trespass Act*. He also cited decisions on this point. He urged that his testimony showed that the procedure for compulsory acquisition was not followed and that the Appellants encroached into his land by a metre and that they bypassed the pegs which the land registrar had put to mark the end of the road reserve. He added that as a leader, the 3<sup>rd</sup> Appellant was considered a mighty entity by the community. He submitted that his constitutional rights were violated without justifiable cause and relied on Section 26 of the *Land Registration Act* in support of the point that there was no challenge to the legality of his title.
13. The Respondent went on to urge that Article 40(3) of *the Constitution* set out the criteria for compulsory acquisition. Additionally, he submitted that KERRA did its work but that the Appellants had no authority to enter his land and order demolition and destruction of his property. He emphasised that KERRA expanded the road legally by 2 feet on the road reserve that was clearly marked by pegs. The Respondent submitted that there was no evidence to show that the 3<sup>rd</sup> Appellant was not involved in the expansion of the road exercise and whether he participated in the encroachment and destruction of the Respondent's property through proxies and agents. He maintained that the 3<sup>rd</sup> Appellant's interest in the encroachment was manifest and that he was acting in cahoots with the 1<sup>st</sup> and 2<sup>nd</sup> Appellants. He added that the 3<sup>rd</sup> Appellant had not suffered any prejudice when he was restrained by the trial court from entering the Respondent's land.
14. The issue for determination in this appeal is whether the court should set aside the findings of the trial court and in its place enter judgment dismissing the Respondent's suit. It is not in dispute that the Respondent is the owner of Ngandori/Kirigi/2077 while the 1<sup>st</sup> Appellant owns Ngandori/Kirigi/2078 and that the two parcels of land are adjacent and are separated by a public road. It is also not in dispute that there was a road expansion project whose implementation led to the filing of this suit.
15. The Respondent's claim before the trial court was that during the expansion of the road, the Appellants trespassed or organised the youth who trespassed onto his land Ngandori/Kirigi/2077 who cut down trees, destroyed his fence and carved out a section of his land for the road expansion without his consent and without following the legal process for compulsory land acquisition. The Appellants denied that they trespassed on the Respondent's land or that they organised for the destruction of the Respondent's land. The Learned Magistrate took the view in her judgement that the photographs produced by the Respondent during the trial showed that there was destruction on his land and that that the Respondent's claim that the destruction was orchestrated by the 1<sup>st</sup> and 2<sup>nd</sup> Appellant was supported by the oral testimony of the Respondent's second witness.
16. From the oral testimony of the Respondent's second witness, it cannot be said there was evidence linking the 1<sup>st</sup> and 2<sup>nd</sup> Appellants to the acts of destruction which the Respondent complained of. There was also no evidence that the 3<sup>rd</sup> Appellant hired the goons accused of causing destruction to



the Respondent's property. The Learned Magistrate noted in the judgment that the involvement of the 3<sup>rd</sup> Appellant in the destruction of the Respondent's land was merely speculative because there was no evidence that placed him on the disputed land. Despite this, the magistrate still entered judgment against him which was a misdirection by the trial court.

17. The Respondent claimed that KERRA expanded the road legally by 2 feet on the road reserve that was clearly marked by pegs and that the Appellants bypassed the 2 feet road reserve and entered his land and dug too close to the Respondent's son's house which was 3 feet from the road reserve. The Respondent neither called the land registrar nor a surveyor to prove his claim that the expansion of the road went beyond what was earmarked by KERRA.
18. If there was encroachment on the Respondent's land during the expansion of the road, then he ought to have directed his claim at the State through KERRA but not the Appellants for the simple reason that the mandate for road construction falls on KERRA and not the Appellants.
19. The purpose of an injunction is to prevent the imminent violation of a party's rights. In other, it looks to the future. As the trial court noted, the road expansion was completed and the road in question was in use. Granting an injunction as the trial court did will not serve any practical purpose, as the road was already expanded. The trial court erred by issuing the permanent injunction against the Appellants.
20. The appropriate recourse for the Respondent would have been to seek compensation for the damage suffered against the proper party or he could have sought compensation for the compulsory acquisition of the portion of his land which he claimed was taken up by the road expansion. In this court's view, the Respondent's claim for compensation for the portion of his land carved out for the road expansion would lie against KERRA but not the Appellants.
21. The Respondent did not prove on a balance of probabilities that the Appellants trespassed onto his land or that they carved out part of his land for the expansion of the road. A claim for compulsory acquisition cannot successfully be sustained against private citizens such as the Appellants in this case.
22. The appeal is allowed. The judgment and decree in Embu CM ELC Case No. 56 of 2018 is set aside. The Respondent's claim in Embu CM ELC Case No. 56 of 2018 is dismissed.
23. Each party will bear its costs for the appeal.

**DELIVERED VIRTUALLY AT EMBU THIS 8<sup>TH</sup> DAY OF APRIL 2025.**

**K. BOR**

**JUDGE**

In the presence of: -

Mr. Githinji Ithigah for the Appellants

Mr. Mugo Njagi- the Respondent appearing in person

Diana Kemboi-Court Assistant

