



**Kapima (Suing as the administrator and personal representative of Kapima Oniango Bakumpa - Deceased) v County Government of Kakamega (Environment & Land Case 232 of 2017) [2022] KEELC 3721 (KLR) (21 June 2022) (Judgment)**

Neutral citation: [2022] KEELC 3721 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA  
ENVIRONMENT & LAND CASE 232 OF 2017**

**DO OHUNGO, J**

**JUNE 21, 2022**

**BETWEEN**

**ISAIAH OSEWO KAPIMA ..... PLAINTIFF**

**SUING AS THE ADMINISTRATOR AND PERSONAL REPRESENTATIVE OF  
KAPIMA ONIANGO BAKUMPA - DECEASED**

**AND**

**COUNTY GOVERNMENT OF KAKAMEGA ..... DEFENDANT**

**JUDGMENT**

1. Kapima Oniango Bakumpa commenced proceedings in this matter by filing plaint on July 12, 2017. He later passed away on January 20, 2018 and was substituted by his son Isaiah Osewo Kapima who obtained letters of administration *ad litem* in respect of his estate. The plaint underwent several amendments resting with Further Amended Plaint filed on June 8, 2022.
2. The plaintiff averred that the deceased was the registered proprietor of the parcel of land known as North/Wanga/Lung'anyiro/94 (the suit property) and that on February 5, 2017 the defendant, while upgrading Okundi – Bulanda Road, extended the said road into the suit property thereby destroying 69 trees and taking 0.275 acres of the suit property. He therefore prayed for judgment against the defendant for:
  - a. A declaration the plaintiff deceased Kapima Oniango Bakumba is the absolute proprietor of the entire L R no North/Wanga/Lung'anyiro/94 measuring 16.5 acres and the defendant has had no right, title or interest in the same or right to open any public road through it and if at all the defendant has opened a public road on the suit land then the said road is illegal as it was constructed on the suit land illegally on February 05, 2017.



- c. Compensation of special damages of kes 34,500/= value of 69 cassia siamea trees uprooted from L R no NORTH WANGA LUNG'ANYIRO/94 on February 05, 2017 and the value of 0.275 acres portion occupied by Okundi – Bulanda public road created on L R no North Wanga/Lung'anyiro/94 at kes 138,000 = in total special damages of kes 172,500/-
  - d. Costs of this suit interest on (c) from the date of filing this suit.
3. The defendant filed an amended statement of defence in which it denied the plaintiff's averments and stated that the plaintiff encroached or trespassed on a public access road.
4. At the hearing, the plaintiff testified as PW1. He stated that the deceased was the registered proprietor of the suit property which measures about 16.5 acres. That on or about February 5, 2017, the defendant through its servants or agents using a caterpillar tractor registration number GK 911V, while upgrading Okundi - Bulanda Road, extended the said road into the suit property without following any procedure in law or issuing the deceased with any legal notice or obtaining the deceased's permission. That as a result of the defendant's action, the deceased's estate lost 69 cassia siamea trees aged 5 months, valued at kshs 34,500, which were uprooted by the said caterpillar in the process of construction of the road. That further, the said estate lost 0.275 acres of the suit property, which now forms part of the road, and which portion is valued at kshs 138,000. That in total, he is claiming special damages of KShs 172,500. He added that the road is a new one and that it was not on the map. He denied that his deceased father encroached on the road.
5. Philip Odongo Kabita testified next as PW2. He stated that he is a Land Valuer of 40 years' experience and that he was instructed by the plaintiff to value the portion in dispute. That the portion taken by the road was 0.10 hectares which he valued at kshs 138,000 in total. He produced his valuation report. He added that he had a map from the lands registry when he visited the scene and that the road was non-existent prior to the defendant's actions.
6. The last plaintiff's witness was Victoria Naliaka Lukhale, an employee of the forestry department based in Kakamega. She stated that she visited the scene on February 15, 2017 at the request of OCS Harambe police station and made a valuation report. That she noted that the road had passed through the plaintiff's land and 69 trees valued at kshs 34,500 were damaged. That the trees were 5 months old and were uprooted by a tractor which was constructing the road.
7. The plaintiff's case was then closed.
8. For the defence, Ezekiel Buhuru Nandwa testified as the sole witness. He stated that he is employed by the defendant as a land surveyor. That there was in existence a public access road along Okundi – Bulanda leading to Bulanda Primary School which is public utility. That on February 5, 2017, the defendant expanded the said existing public road. He denied that the plaintiff's 69 trees were uprooted or that 0.275 acres valued at kshs 138,000 was curved out of the suit property. Under cross examination, he conceded that he did not have any map showing that the road existed prior to the defendant's actions. The defence case was closed at that point.
9. Parties thereafter filed submissions. The plaintiff argued that despite admitting that the road extension work took place, the defendant has neither shown that it compulsorily acquired the deceased's land nor availed its own valuation. On its part, the defendant argued that the special damages sought by the plaintiff are exaggerated and have not been proven to the required standard.
10. I have considered the parties' pleadings, evidence and submissions. The issues that arise for determination are whether the deceased was the proprietor of the suit property, whether the road



enlargement or extension works caused the damage referred to by the plaintiff and whether the reliefs sought are available.

11. The plaintiff produced a copy of the register in respect of the suit property, certified by the land registrar on May 17, 2017, which confirms that the deceased was registered as proprietor of the suit property on May 12, 2011 and that there was no change of ownership after that date. The defendant did not offer any evidence to challenge the contents of the register. In terms of sections 26, 34 and 35 of the [Land Registration Act](#), I accept the copy of register as conclusive evidence that the deceased was the registered proprietor of the suit property.
12. The defendant has conceded that there was road construction on the same date and along the path that the plaintiff has described. Whereas the defendant claims it was expanding an existing road, it has not offered any details as to the dimensions of the said road and any possible encroachment by the deceased. Despite being a public institution with the capacity of accessing and producing records including maps and sketches, the defendant offered absolutely no documentary evidence to support its contention that a public road existed where the work was done. That is quite telling since the defence witness was a surveyor yet he did not produce any map or sketch to justify the defendant's claim that the deceased had encroached on the road. On the other hand, beyond asserting that the suit property was encroached and 69 trees uprooted, the plaintiff produced a valuation report with a sketch showing that the road cut right across the suit property. It further showed the affected area measuring 0.10 hectares which translates to approximately 0.247 acres. The valuer assessed the open market value of the affected area at a total of kshs 138,000.
13. The plaintiff further produced a report prepared by the Matungu sub county forrest fficer, an officer of the Kenya Forest Service, which confirmed the quantum of uprooted trees at 69 and put their value at kshs 34,500. I note that the officer stated in her report that she visited the site on February 15, 2017, hardly a fortnight after the date of the damage. I have no reason to doubt her assessment, which I accept as true.
14. The two reports produced by the plaintiff and the sums indicated therein add up to kshs 172,500. In the absence of any evidence to the contrary, I am persuaded that the plaintiff has proven the sums claimed. I am however not persuaded that I need to issue a declaration that the deceased is the absolute proprietor of the suit property since there was no dispute on ownership of the said property. Further, since the plaintiff only holds a grant ad litem, the amount awarded to the estate of the deceased shall be paid only to the estate through a legal representative with a full grant.
15. In sum, I enter judgment against the defendant and in favour of the estate of Kapima Oniango Bakumba (deceased) as follows:
  - a. kshs 172,500 (One Hundred Seventy-Two Thousand, Five Hundred) being value of 0.275 acres of land and 69 cassia siamea trees.
  - b. Costs of the suit.
  - c. Interest on (a) and (b) above.
  - d. The amounts awarded under (a), (b) and (c) above shall be paid to the estate of Kapima Oniango Bakumba (deceased) through a legal representative with a full grant in respect of the said estate.

**DATED, SIGNED AND DELIVERED AT KAKAMEGA THIS 21<sup>ST</sup> DAY OF JUNE 2022.**

**D O OHUNGO**



**JUDGE**

**Delivered in open court in the presence of:**

**No appearance for the plaintiff**

**Mr Osango for the defendant**

**Court assistant: E Juma**

