



**Nyakwara v Nyamira County Government & 3 others (Environment & Land Case 79 of 2021) [2022] KEELC 3840 (KLR) (29 July 2022) (Judgment)**

Neutral citation: [2022] KEELC 3840 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NYAMIRA  
ENVIRONMENT & LAND CASE 79 OF 2021**

**JM KAMAU, J  
JULY 29, 2022**

**BETWEEN**

**ALOYS NYANGA NYAKWARA ..... PLAINTIFF**

**AND**

**NYAMIRA COUNTY GOVERNMENT ..... 1<sup>ST</sup> DEFENDANT**

**EXECUTIVE COMMITTEE MEMBER, LANDS HOUSING & PHYSICAL  
PLANNING ..... 2<sup>ND</sup> DEFENDANT**

**EXECUTIVE COMMITTEE MEMBER ..... 3<sup>RD</sup> DEFENDANT**

**TRANSPORT, ROADS & PUBLIC WORKS ..... 4<sup>TH</sup> DEFENDANT**

**JUDGMENT**

1. This suit was commenced by way of a Complaint dated July 28, 2020 for the following orders: -

- “i. Declaration that the Plaintiff is the lawful, Bona-fide and Registered owner of LR Nos West Mugirango/Siamani/2213, 5640 and 6395 respectively.
- ii. Declaration that the activities and/or acts of the Defendants herein of destroying and/or damaging of assorted trees and creating roads on LR Nos West Mugirango/Siamani/5640 and 6395, respectively and partially demolishing and/or bringing down part of the Building established on West Mugirango/Siamani/2213 were unlawful, illegal and otherwise amounts to trespass.
- iii. Permanent Injunction restraining the Defendants by either by themselves, agents, servants and/or anyone claiming under the Defendants from entering into, re-entering, trespassing onto, creating Public Road, and interfering with and/or in any other manner dealing with the suit properties, that is, West



Mugirango/Siamani/2213, 5640 and 6395 and/or any portions thereof, save for purposes of conducting the statutory inspections in accordance with the provisions of the Physical Planning Act.

- iv. Special damages in the sum of Kshs. 4,900,000/=.
- v. General Damages for Trespass and/or Mense Profits.
- vi. Interest on (iv) and (v) above at Court rates.
- vii. Costs of this suit be borne by the Defendants.
- viii. Such further and/or other relief as the Honourable Court may deem fit and expedient so to grant.”

2. The cause of action as averred by the Plaintiff is that at all material times the Plaintiff was the registered Proprietor of the aforesaid parcels of land and as the registered Proprietor he is entitled to exclusive rights over the same to the exclusion of the whole world which include the Defendants. But on or about August 2019, the Defendants trespassed on West Mugirango/Siamani/5640 and 6395 and destroyed assorted trees therein in the name of creating a public road running through the suit properties and in May 2020 partially demolished developments and/or a commercial storey building on West Mugirango/Siamani/2213 which hosted several tenants. The Plaintiff estimated his loss at Kshs. 4,900,000/= for which he claims compensation in form of Special Damages.
3. In their joint statement of Defence the Defendants denied all the allegations contained in the Plaint and claimed that the Plaintiff acquired the suit properties fraudulently as they form part of a road reserve. They also denied the allegations of trespass and destruction of trees and houses and accordingly deny the particulars of Special Damages. In his Reply to Defence, the Plaintiff repeated the contents of the Plaint and insisted that the suit properties belonged to him.
4. The Plaintiff repeated the averments in the Plaint and his statement of facts and maintained that the commercial storey building hosted several tenants who remitted rental income to the Plaintiff and that the value of the effects of the partial demolition is Kshs. 2,500,000/= and that the value of the destroyed trees was Kshs. 1,500,000/= and a further Kshs. 900,000/= being the value of other destroyed trees.
5. On their part, save stating that their witnesses are the County Surveyor, the Physical Planner and the Land Registrar, the Defendants have never filed any witness statements and never called any witness to testify. They however filed the following documents on 9<sup>th</sup> December 2021: -
  1. Survey Sheet Map.
  2. Master Plan of Township.
  3. Layout Plant.
6. On 1<sup>st</sup> April, 2021 the following were filed as the issues for trial by the Plaintiff’s Counsel. The Defendants did not file any.
  - “ 1. Whether the Plaintiff is the lawful and legitimate proprietor over and in respect of LR Nos West Mugirango/Siamani/2213, 5640 and 6395, respectively, and if so, whether the Plaintiff is entitled to absolute and exclusive rights thereto.
  2. Whether the suit Properties herein, were acquired through and/or vide Fraud or otherwise and whether the allegation pertaining to and/or concerning Fraud, if any, is well grounded?



3. Whether the suit Properties herein (sic) fall on and/or comprise of (sic) Road Reserve and in any event, whether the Defendants herein, have any lawful and/or justified right to enter upon and/or carry out offensive activities on portions of the suit properties on the basis of the self-righteous assessment and/or contention of illegality.
  4. Whether the actions by and/or on behalf of the Defendants, inter alia the Demolitions carried out over portions of the suit properties were justified and if not, whether such actions amounted to trespass.
  5. Whether the Defendants had a lawful basis to take the law unto own hands and inflict the destructions and/or demolitions on the suit properties and if not, whether the Plaintiff herein is entitled to protection under the law?
  6. Whether the suit by and/or on behalf of the Plaintiff discloses a reasonable cause of action?
  7. Whether the Statement of Defence by and/or on behalf of the Defendants, raises any Bona fide and Triable Issues, whatsoever?
  8. Whether the Plaintiff is entitled to compensation and if so, the nature of the compensation?”
7. The Plaintiff took to the witness box on 8<sup>th</sup> February 2022 and after taking oath and adopting his statement dated 28<sup>th</sup> July 2020, he produced the following documents to support his case: -
- “1. Copy of the Title Deed in respect of LR No. West Mugirango/Siamani/6395.
  2. Copy of the Certificate of Official Search in respect of LR No. West Mugirango/Siamani/5640.
  3. Copy of the Title Deed in respect of LR No. West Mugirango/Siamani/5640.
  4. Copy of the Certificate of Official Search in respect of LR No. West Mugirango/Siamani/2213.
  5. Copy of the Title Deed in respect of LR No. West Mugirango/ Siamani /2213.
  6. Copy of the Mutation in respect of LR No. West Mugirango/Siamani/5637.
  7. Copy of the Valuation Report on Destruction of Commercial Storey Building on LR No. West Mugirango/Siamani/2213 dated 27<sup>th</sup> May 2020.
  8. Copy of a Notice on Daily Nation Newspaper dated June 13, 2020.
  9. Bundle of KRA payment slip on account of Income Tax-Rent Income.
  10. Bundle of Bank Deposit Slips on account of payment of Income Tax-Rent Income.
  11. Copy of the letter dated 1April 2, 2013to the County Director NEMA – Nyamira County.
  12. Copy of NEMA official Receipt dated May 14, 2013.



13. Copy of the Environment Impact Assessment Report Reference NEMA/NMR/PR/5/2/0003.
  14. Copy of the Environment Impact Assessment Licence dated May 14, 2013.
  15. Copy of the Receipt from Town Council of Nyamira dated May 16, 2012.
  16. Copy of Handwritten Notes from Department of Public Works Nyamira County.
  17. Bundle of photographs in respect of activities on the Suit Properties.
  18. The Pleadings, Affidavits and all other Documents filed in respect of the instant suit.”
8. The latter were filed on July 30, 2020 and he also later filed further documents on 14<sup>th</sup> December 2021 as follows: -
1. Copy of the Valuation Report on Destruction on LR No. West Mugirango/Siamani/5640 dated 27<sup>th</sup> July 2020.
  2. Copy of the Valuation Report on Destruction on cultivated land on LR No. West Mugirango/Siamani/6395 dated 27<sup>th</sup> July 2020.
  3. The Pleadings, Affidavits and all other Documents filed in respect of the instant suit.”
9. He then put the value of the destruction of his trees at Kshs. 900,000/= in LR West Mugirango/Siamani/5640, 1.5 million for LR West Mugirango/Siamani/6395 and Kshs. 2.5 million for, LR West Mugirango/Siamani/2213 making it a total of Kshs. 4,900,000/= for which he prays for judgment as contained in the Plaintiff.
10. On cross-examination from Mr. Nyachiro for the Defendants, Mr. Nyakwara said that he did not provide Bills of Quantities to the court. There was also no Report from the Forest Officer to confirm that Mogoi Nyakwara had placed a caution over West Mugirango/Siamani/2213 in 2020. He also admitted that there is no Report from the Surveyor and he did not produce any receipts to prove the rental incomes. He finally conceded that the mutations did not indicate the measurements of the suit land but on re-examination he stated that the measurements were indicated.
11. After the Plaintiff closed his case on February 8, 2022, Mr. Nyachiro requested for another day to tender the Defence evidence and have the Defendant’s case heard. He was granted one more chance on March 9, 2022 when he had no witnesses. There were no witnesses present in court and summons were issued on the County Surveyor and the Chief Officer Physical Planning, Roads and Urban Development Mr. Gori to appear in court on March 25, 2022 at 10.30am for the hearing of the case. On the said date, Counsel for the Defendants confirmed that Witness Summons were served upon the officers in question but they never turned up in court. The court reluctantly allowed the adjournment and extended the summons to 10<sup>th</sup> May 2022 when Mr. Nyachiro was unwell and the matter could not proceed. The same was adjourned to June 15, 2022 when the court was not sitting and a new date was given being July 12, 2022 when Ms. Bonareri appeared online for the Defendants but with no witnesses and when she was denied an adjournment she asked for five minutes but disappeared completely. The court then did the obvious by having the case closed and allowed parties to file their written submissions within 14 days with each party getting its share of 7 days.



12. I have considered the only written submissions on record, that of the Plaintiff. The Plaintiff's evidence on liability is uncontroverted. The Court has also been provided with copies of Valuation Reports which it has considered.
13. As for the destroyed trees and crops, no Report was tabled by an expert nor were we given the number of trees. I would therefore award Kshs. 50,000/= for this head. As for the other heads I award a total of Kshs. 1,450,000/=.
14. In summary I accordingly enter Judgment for the Plaintiff against the Defendants jointly and severally as follows: -
  - i. A Permanent Injunction be and is hereby issued restraining the Defendants either by themselves, agents, servants and/or anyone claiming under the Defendants from entering into, re-entering, trespassing onto, creating Public Road, and interfering with and/or in any other manner dealing with the suit properties, that is, West Mugirango/Siamani/2213, 5640 and 6395 and/or any portions thereof, save for purposes of conducting the statutory inspections in accordance with the provisions of the Physical Planning Act.
  - ii. Special Damages in the sum of Kshs. 1,500,000/=.
  - iii. General Damages for Trespass in the sum of Kshs. 300,000/=
  - iv. Costs of this suit.
  - v. Interest on (iii), (iv) and (v) above at Court rates from the date of Judgment till payment in full.
15. There was no proof of Mense Profits and therefore this prayer is disallowed.

**JUDGMENT DATED, SIGNED AND DELIVERED AT NYAMIRA THIS 29<sup>TH</sup> DAY OF JULY 2022.**

**MUGO KAMAU**

**JUDGE**

**In the Presence of : -**

Court Assistant - Sibota

Mr. Ogenga for the Plaintiff

Ms. Bonareri holding brief for Mr. Nyachiro for the Defendants

