



**Momanyi v Nyamira County Government & another (Environment & Land
Case 53 of 2021) [2022] KEELC 3842 (KLR) (26 July 2022) (Judgment)**

Neutral citation: [2022] KEELC 3842 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYAMIRA
ENVIRONMENT & LAND CASE 53 OF 2021**

JM KAMAU, J

JULY 26, 2022

BETWEEN

JONES MORAA MOMANYI PLAINTIFF

AND

NYAMIRA COUNTY GOVERNMENT 1ST DEFENDANT

**COUNTY ENGINEER, NYAMIRA COUNTY GOVERNMENT 2ND
DEFENDANT**

JUDGMENT

1. The Plaintiff's claim is to the effect that as the registered owner of LR No. West Mugirango/Siamani/4255 sometime in October 2014, the 2nd Defendant unlawfully went to the suit land and purported to survey it thereby creating a road of access through the Plaintiff's land. The 2nd Defendant claimed to be doing so on instructions from the 1st Defendant to create and open new roads within the County. But the 1st Defendant denied any such knowledge or instructions. The said construction was commenced and by the time of instituting this suit, the same had progressed to the Plaintiff's land. The Plaintiff therefore sought a Declaration that the Defendants have no right and/or authority to trespass onto LR No. West Mugirango/Siamani/4255 and/or construct a road of access through the said suit land. He also sought an injunction against the said construction and/or trespass.
2. The 1st Defendant filed a Defence on 11/7/2018 and denied all the contents of the Plaint. On 22/5/2017 this court made an order directing that the Land Registrar and the County Surveyor, Nyamira do visit the Land Parcel No. West Mugirango/Siamani/4255 to confirm whether there is a road of access on the land as claimed by the Plaintiff. the Land Registrar was ordered to mark and point out the delineations of the access road in case there is one. The Report was to be filed in court within 90



days but the same kept on being extended and on 28/4/2022 both the two officers filed their Reports dated 25/4/2022 respectively. The Land Registrar's Report read as follows: -

.....It was discovered that there is a clear road of access leading to the subject land from the main highway. The same is not disputed by the parties to this case or the owners of the neighbouring properties. However, the bone of contention is with respect to a totally different road which the 1st Respondent is in the process of opening up. The contentions/proposed road is Not on the Registry Index Map for the area (West Mugirango/Siamani Sheet No. 11) hence the said road is not lawful. The Representative from the Nyamira County Government, Physical Planning Department did admit as much. The said proposed road is only shown on the proposed Local Physical Development Plan for Nyamira Township a copy of which the Respondent produced. According to the said proposed plan, the contentious road cuts across the subject land and other properties. The Plaintiff's property is therefore at risk of unlawful intrusion if the Respondents will proceed with the implementation of the unapproved Local Physical Development Plan.”

3. The County Surveyor's Report supports this Report and adds as follows: -

.....This road is one of the roads that were opened by the County Government of Nyamira, an exercise that was meant to properly plan Nyamira town in terms of infrastructure. The County government had opened this road in dispute until it was stopped by a court injunction approximately 25 metres from the Plaintiff's property. The Registry Index Map West Mugirango/ Siamani Sheet 11 doesn't show existence of this particular access road at this disputed area. However, there are other access roads serving the Plaintiff and his neighbours and there are no disputes.”

4. A sketch map extract of sheet 11 Siamani was attached to the Surveyor's Report showing the section of disputed road which according to the Surveyor's sketch and notes, the same has already been excavated and also the area in dispute where the Respondents intend to construct a road through part of LR North West Mugirango/5/5255 as well as North West Mugirango/5/5133.

5. After these Reports were filed, both parties were invited to make comments on the same on 13/7/2022 and on 3/6/2022 the Plaintiff filed his comments of course stating that he is in agreement with the two Reports. He requests the court to adopt both Reports and enter final judgment in favour of the Plaintiff as prayed for in the Plaint. His plea is buttressed by the fact that even the 1st Defendant through its officers admitted that the intended road of access was its creation and had not been earmarked for an access road. The Defendants did not file any comments. This being the case and there being no other prayer besides a declaration and permanent injunction,

6. what would the court achieve by visiting the *locus quo* or by proceeding to hear the case once the Land Registrar has established there is no road of access on the disputed area and the 1st Defendant admits the same through its technical officers?

7. It follows that the Resolution of boundary disputes has always been in the purview of the Land Registrar. Section 21 of the Repealed Act reads as follows:

21.

- (1) Except where, under section 22, it is noted in the register that the boundaries of a parcel have been fixed, the registry map and any filed plan shall be deemed to indicate the approximate boundaries and the approximate situation only of the parcel.



- (2) Where any uncertainty or dispute arises as to the position of any boundary, the Registrar, on the application of any interested party, shall, on such evidence as the Registrar considers relevant, determine and indicate the position of the uncertain or disputed boundary.
 - (3) Where the Registrar exercises the power conferred by subsection (2), he shall make a note to that effect on the registry map and in the register and shall file such plan or description as may be necessary to record his decision.
 - (4) No court shall entertain any action or other proceedings relating to a dispute as to the boundaries of registered land unless the boundaries have been determined as provided in this section.
 - (5) Except where, as aforesaid, it is noted in the register that the boundaries of a parcel have been fixed, the court or the Registrar may, in any proceedings concerning the parcel, receive such evidence as to its boundaries and situation as it is or he thinks fit.
8. The provisions of Section 18 (2) of the *Land Registration Act* are a replica of Section 21(4) of the now Repealed *Registered Land Act*. It was not in vain that this provision was left intact in the new Act since the Land Registrar is endowed with the expertise that the Court doesn't have which enables it to resolve the conflicts expeditiously.
9. The Report of the Land Registrar, Nyamira dated 02/11/2021 has finally disposed of the matter. The Report is hereby adopted and I give a determination based on the same as the Judgment of the court and I further direct that the same be implemented forthwith. And since the Report finally disposes of this matter the Ruling translates into the Judgment of the Court as prayed for in the Plaint.

JUDGMENT DATED, SIGNED AND DELIVERED AT NYAMIRA THIS 26TH DAY OF JULY 2022.

MUGO KAMAU

JUDGE

In the Presence of: -

Court Assistant - Sibota

Mr. Momanyi for the Plaintiff

Mr. Meroka for the Defendants

