



Mayfair Holdings Limited v Ondu & another (Sued in their capacity as Chairman and Secretary respectively of Kisumu East West Youths) (Environment & Land Case 302 of 2015) [2025] KEELC 1098 (KLR) (6 March 2025) (Judgment)

Neutral citation: [2025] KEELC 1098 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISUMU
ENVIRONMENT & LAND CASE 302 OF 2015**

E ASATI, J

MARCH 6, 2025

BETWEEN

MAYFAIR HOLDINGS LIMITED PLAINTIFF

AND

GEORGE ONDU 1ST DEFENDANT

AUSTIN ABUYA OSINDE 2ND DEFENDANT

**SUED IN THEIR CAPACITY AS CHAIRMAN AND SECRETARY
RESPECTIVELY OF KISUMU EAST WEST YOUTHS**

JUDGMENT

1. The Plaintiff sued George Ondu and Austin Abuya Osinde in their capacity as the Chairman and Secretary respectively of Kisumu East And West Youth vide the plaint dated 6th October, 2011. The suit was first filed in the High Court as KSM HCCC No. 166 of 2011 but later transferred to the Environment and Land Court for hearing and disposal.
2. The subject matter of the suit is a parcel of land known as Kisumu Municipality Block 7/214 (herein called the suit land).
3. The Plaintiff's case is that it is at all material times the registered owner of the suit land. That in December, 2010, the Defendants who had been allocated land adjacent to the suit land, destroyed structures erected by the Plaintiff and specifically destroyed the hoarding with the effect that they totally blocked the service lane to the Plaintiff's premises hence making the premises inaccessible to the Plaintiff.

The Plaintiff therefore sought for the following relief;

4.



- a. An order of permanent injunction against the Defendants, their agents, representatives, assigns or any other person acting through their direction from blocking the service lane or in any other way interfering with the Plaintiff's land parcel No. Kisumu Municipality Block 7/214.
 - b. Costs of the suit.
 - c. Any other order or relief the honourable court deems fit and just to grant in the interest of justice.
5. The Defendants filed a defence dated 1st August, 2012 by which they denied the Plaintiff's claim.

The Evidence

6. On behalf of the Plaintiff, two witnesses testified. PW1, Amin Mohamed Gilani, adopted the contents of his witness statement filed in court on 21st September, 2015 as his evidence in chief. He had stated in the witness statement that he was the Managing Director of the Plaintiff's Company which was the registered proprietor of the suit land by way of a leasehold.
7. That in the year 2009 they did commence construction on their premises but faced interruption from the Defendants about a year later. That the Defendants had been allocated a plot adjacent to the suit land for them to construct public toilets being funded by the Constituency Development Fund (CDF).
8. That the Defendants then destroyed the structures that were erected by the Plaintiff and in particular the hoarding erected by the Plaintiff thereby blocking the Plaintiff's service lane and making the suit land inaccessible.
9. That the Defendants threatened the Plaintiff's contractor that if the hoarding is erected again they will destroy it. That the Defendants have also threatened the directors and employees of the Plaintiff that they will not allow any further construction or development to the Plaintiff's service lane on the suit land.
10. PW1 produced exhibits namely; certificate of lease for the suit land, site plans and letter dated 10th May, 2011 from Municipal Council of Kisumu. PW1 testified that although an order of injunction was issued, the Defendants did not comply.
11. On cross-examination, PW1 stated that there was no service lane on the ground as the Defendants built kiosks on it claiming that they had approvals from government.
12. PW2 was a Land Surveyor. He stated that he visited the site of the suit land and land parcel NO.464. That the service lane between the two parcels of land was about 2 meters wide. That there were kiosks built on the service lane and therefore plot No.214 cannot be accessed. He produced a report dated 23rd February 2023 as exhibit. His observation and conclusion in the report was that the service lane had not been cleared except around the back door. That it had been established that the 3-meter service lane had not been cleared.
13. On behalf of the Defendant, one witness George Ondu Obala testified. He adopted the contents of his witness statement dated 20th May, 2024 as his evidence in chief. He had stated in the witness statement that he was the Chairman of East to West Youth Group. That on or about 2nd April 2008 they wrote to the Mayor and Town Clerk Kisumu Town to give them a temporary occupation license to operate on the public plot since they had so many youths who were not engaged in any gainful employment especially after post-election violence and skirmishes of 2007 destroyed many businesses.



14. That they received a letter of temporary occupation license from Municipal Council of Kisumu on 6th August 2008. That they paid the requisite charges and that on 20th November 2008 they got a letter that their plans had been approved. He testified that the land they are occupying is public land and that they even renovated the toilets with the authority and consent of the Council and members of the public. That they had cleared the 3 meters service lane
15. He produced exhibits, namely; list of East to West Youth Group Members, Letter to the Mayor, Letter of Temporary Occupation License, Receipt, Approval Plan, Letter of Approval dated 20th November, 2008 and photographs.
16. He testified further that since they had now cleared the service lane, the matter can be settled amicably.
17. On cross-examination, he stated that there should be a service lane. That although they had put up kiosks behind the building, they had now cleared them. That there are other kiosks on the rest of the area. That a service lane is in the nature of a road and that it is not the entire of the service lane that concerned the Plaintiff.

Submissions

18. It was submitted on behalf of the Plaintiff vide the written submissions dated 22nd October, 2024 filed by the firm of Otieno, Yogo, Ojuro & Company Advocates that the Plaintiff is entitled to use all the property situated on the suit land parcel number Kisumu Municipality Block 7/214. Counsel relied on the provisions of Section 24(b) on the entitlement of a registered property of a leasehold interest in land.
19. Counsel submitted further that the Defendants' actions constituted trespass. That under Section 152A of the *Land Act* unlawful occupation of private land is prohibited. That the Defendants have interfered with the Plaintiff's right to exclusive possession of the land as enshrined under both statutory law and the common law doctrine of trespass.
20. That the service lane is critical for the Plaintiff's enjoyment and use of the suit land. That by blocking the service lane, and building kiosks on the service lane, the Defendants impeded the Plaintiff's right to the access its property.
21. That under Section 28 of the *Land Registration Act*, rights of way and easements may attach to land and they should be respected by all parties. That the Defendants' obstruction of the service lane constitutes a violation of the Plaintiff's right to access its property.

No submissions were filed by or on behalf of the Defendants.

Issues of Determination

22. From the pleadings, the evidence and submissions, a sole substantive issue arises for determination namely; whether or not the Plaintiff is entitled to the relief sought.

Analysis and Determination

23. There is no dispute that the claim herein concerns the service lane that served among other properties, the suit land herein. The Plaintiff pleaded that the Defendants had invaded the service lane, destroyed the hoarding, threatened the directors and employees of re-erecting the hoarding and erected kiosks on the service lane thereby blocking access to the suit property.



24. Although the Defendants denied the Plaintiff's claim vide their defence, in his testimony, DW1 admitted that there were kiosks which they had erected on the area of the service lane measuring 3 metres but which they had since removed and cleared the place and that hence the matter should be settled amicably. However, on cross-examination, he admitted that they had removed the kiosk on only part of the service lane and that other kiosks were still there. He denied that they had blocked any road or service lane.
25. PW2 the Land Surveyor in his evidence confirmed that the service lane was still blocked. He produced a report as exhibit P.6. His conclusion in the report was that the service lane had not been cleared except around the back door.
26. There is no dispute that the Plaintiff is the registered owner of the suit land. PW1 produced copy of certificate of lease dated 7th November 2002 to prove this. As registered owner he is entitled to exclusive enjoyment of the land as provided for in section 24 of the *Land Registration Act*. Further as an owner of land, his right to the land is protected by the provisions of article 40 of *the Constitution* of Kenya 2010.
27. Neither the Defendants nor the author or the approval that the Defendants claim to hold has authority to unlawfully block access to the suit land to the detriment of the Plaintiff. Exhibit P. 3 a letter from the Municipal Council of Kisumu dated 10 /5/2011 and addressed to the Plaintiff in respect of the service lane the subject hereof stated clearly that service lanes are meant to be used for access, that no kiosks should be built thereon so as to bar access.
28. I find that the Plaintiff has proved its case on a balance of probabilities. Judgement is therefore hereby entered in favour of the Plaintiff as prayed in the plaint and against the Defendants for: -
- 29.
- a. An order of permanent injunction restraining the Defendants, their agents, representatives, assigns or any other person acting through their directions from blocking the service lane or in any other way interfering with the Plaintiff's land parcel No. Kisumu Municipality Block7/214.
 - b. Costs of the suit.

Orders accordingly.

JUDGEMENT DATED AND SIGNED AT KISUMU AND DELIVERED THIS 6TH DAY OF MARCH, 2025 VIRTUALLY THROUGH MICROSOFT TEAMS ONLINE APPLICATION.

E. ASATI,

JUDGE.

In the presence of:

Maureen - Court Assistant.

Odhiambo h/b for Yogo for the Plaintiff

Omondi T for the Defendant.

