



Kinyuru & another (Suing as Legal Administrators of the Estate of the Late Geoffrey Kinyuru Njenga) v Kajiado County Land Surveyor (Environment & Land Case E028 of 2023) [2025] KEELC 5214 (KLR) (10 July 2025) (Judgment)

Neutral citation: [2025] KEELC 5214 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND CASE E028 OF 2023
LC KOMINGOI, J
JULY 10, 2025**

BETWEEN

PETER KIRURI KINYURU 1ST PLAINTIFF

JANE NJOKI KINYURU 2ND PLAINTIFF

**SUING AS LEGAL ADMINISTRATORS OF THE ESTATE OF THE LATE
GEOFFREY KINYURU NJENGA**

AND

KAJIADO COUNTY LAND SURVEYOR DEFENDANT

JUDGMENT

1. By the Plaint dated 4th April 2023, the Plaintiffs claim that their father, the late Geoffrey Kinyuru Njenga was the registered owner of parcels Ngong/Ngong/11488 and 11489. It is their case they have been residing thereon with their families for over four decades. They have been carrying out agricultural activities such as farming and rearing of livestock and poultry.
2. It is further the Plaintiffs' case that on 3rd May 2019, the Chief Kibiko Location, wrote a letter to the Ministry of Lands and Urban Planning requesting for opening of an access road through the suit properties; Ngong/Ngong/11490, 11489, 11488, 11487, 11848 and 2617. On 18th July 2019, they received a letter from the Defendant indicating that he would visit the said parcels to conduct a survey and establish a public access road. That on 8th August 2019, officials from the Defendant's office visited the Plaintiff's land and started demarcating the Plaintiff's lands as well as parcel Ngong/Ngong/11490 which also belonged to their late father until 1990 when it was sold off to one Nina D. Mwangemi. The Plaintiffs reported the matter to the Directorate of Criminal Investigations Ngong and also wrote a letter dated 9th August 2019 to the Defendant protesting the said activity as it amounted to trespass.



3. On 11th December 2019, one of the Plaintiffs brothers found about six (6) people, illegally demarcating the suit property. On 19th December 2019, the same people acting on the Defendant's instructions, hired casual labourers to uproot trees and cut the Plaintiffs fence to pave way for the purported access road. The Plaintiffs claim that the casual labourers did this under the supervision of officers from Kibiko Police Post.
4. They further claim that on 23rd December 2019, there was a meeting between the Plaintiff, the District Officer, the area chief, and a representative of a 14 member committee to discuss the issue of access. During the meeting, the District Officer stated that there should be an access road between parcels Ngong/Ngong 11489 and 11490. The plaintiffs contest this stating that there existed no access road between these parcels of land. On 28th December 2019, the Land Registrar accompanied by the Chief Kibiko Location and a member of the Land Control Board visited the disputed land and called one of the Plaintiff's- Peter Kinyuru where it was agreed that the access road should be on parcel 14848. However, on 4th April 2020, a lorry emptied quarry stones on the Plaintiff's parcel Ngong/Ngong/11489 to the objection of the Plaintiff- Jane Kinyuru who was arrested in the process. Sometime in 2021, the owner of Ngong/Ngong/11490 called them indicating that he had instructions from the area chief to remove the Plaintiff's boundary trees to pave way for expansion of the road.
5. It is the Plaintiffs' case that this is an act of trespass and an illegal creation of a road through their land without their consent which will interfere with their exclusive possession and ownership. They claim that since the destruction of the fence, they have suffered great loss as animals freely graze on their land while destroying crops.
6. They therefore seek:
 - a. An order to permanently close the public access road illegally opened in the parcels of lands known as Ngong/Ngong 11488 and Ngong/Ngong 11489.
 - b. An order of specific performance to compel the Defendant to re store the Plaintiff's parcels of lands known as Ngong/Ngong 11488 and Ngong/Ngong 11489 as there were before the creation and opening of the illegal public road.
 - c. The Honourable court be pleased to grant an order of permanent injunction against the Defendant either by himself or through its officers or its agent to be restrained from entering, surveying, demarcating and/or allocating any parcels of lands known as Ngong/Ngong 11488 and Ngong/Ngong 11489 to any person and from interfering with the Plaintiffs quiet enjoyment of the lands.
 - d. The Honourable court be pleased to grant an order of permanent injunction against any trespasser in the parcels of lands known as Ngong/Ngong 11488 and Ngong/Ngong 11489
 - e. General damages for destruction of the Plaintiffs barbed wire and net wire.
 - f. General damages for loss of property and mental distress suffered by the Plaintiffs and their families.
 - g. Costs and interest of this suit.
7. Despite service, the Defendant neither entered appearance nor filed a statement defence.



Evidence of the Plaintiffs

8. PW1, Jane Njoki Kinyuru, one of the Plaintiffs, adopted her witness statement dated 3rd April 2023 as her evidence in chief. She produced her bundle of documents as exhibit which was marked as P. Exhibit 1 to 7. She stated that the Defendant was still using the road illegally created which ought not to be public land. She thus sought for the reliefs in the Plaint.
9. At the close of the oral testimony, the plaintiffs tendered final written submissions.

Submissions of the Plaintiff

10. Counsel submitted that the Plaintiff, Jane Njoki Kinyuru (PW1), is a co-administrator of the estate of her late father, Geoffrey Kinyuru Njenga, who was the registered proprietor of land parcels Ngong/ Ngong 11488 and 11489. That by a letter dated 3rd May 2019, the Chief of Kibiko Location requested to open a public access road through several parcels including their own. The Plaintiff contends this was a request to create a public road through private land.
11. On 8th August 2019, the Defendant allegedly unlawfully entered the Plaintiff's land and conducted a survey without notice or consent, in breach of the Plaintiff's constitutional right to property. PW1 asserted that no public road exists in the disputed parcels according to official maps and a letter dated 18th September 1979, which exempted the parcels from such a road. On 11th December 2019, a group of six individuals illegally entered the land and attempted to demarcate it to create a public access road, allegedly under the Defendant's direction. This was done without the Plaintiffs' involvement or consent.
12. Counsel submitted that Section 26(1) of the [Land Registration Act](#), protected the Plaintiffs title unless it was fraudulently or illegally acquired. In this case, no such challenge to title existed citing Dr. Joseph N.K. Arap Ngok v. Justice Moijo Ole Keiwua & Others ([CA No. 60 of 1997](#)) which affirmed that a registered proprietor's title is absolute and indefeasible, only impeachable through fraud or misrepresentation to which the holder is a party. As such, as provided under Section 3(1) of the [Trespass Act](#) and held in John Kiragu Kimani v. Rural Electrification Authority [2018] eKLR and Philip Ayaya Aluchio v. Crispinus Ngayo (Civil Case No. 74 of 2010) the Defendant had trespassed on the Plaintiffs properties.
13. Having established the illegal act of trespass, the Plaintiff was entitled to the relief of permanent injunction sought citing the Court of Appeal's case of Malier Unissa Karim v. Edward Oluoch Odumbe [2015] eKLR on the test for grant of mandatory injunctions.
14. Counsel argued that the Plaintiff was the rightful owner of the suit land, that no lawful public access road exists thereon, and urged the Court to issue appropriate orders to restrain the Defendant from further infringement and trespass.

Submissions of the Defendant

15. The Defendant did not file any submissions.

Analysis and Determination

16. I have considered the pleadings, the evidence on record, the written submissions, and the authorities cited. I find that the issues for determination are:
 - i. Whether the Plaintiffs are entitled to the reliefs sought;



- ii. Who should bear costs of the suit?
17. It is not clear if the dispute is about opening of a closed access road, creating a new access road, or extending the road. The Plaintiff states that the owner of parcel LR No. Kajiado/ Ngong/ Ngong/11490 informed her that he had instructions to clear the fence to cause an extension of the road. The Plaintiff also claims that the area Chief, Kibiko wrote to the defendant asking for creation of an access road through their property. The letter dated 3rd May 2019 from the area Chief Kibiko location addressed to the Ministry of Lands and urban Planning County Government of Kajiado, reads:
- “The residents of Kibiko sub location wish to appeal to your office to assist to open up the above mentioned road which connects Ole Montet road to Forest Lane. The official up to date map Ref; 8/NE clearly shows that road.
- On the ground the owners of plot No. 11490, 11489, 11488, 11487 and 11486 have closed the road leaving no access either way.
- This road will serve to ease transportation of pedestrian as well as vehicles to all residents and the public at large.....”
18. On 9th August 2019, the Plaintiffs wrote a letter addressed to the County Surveyor Kajiado. It reads;
- “ ... I noted with regret that although your letter stated that you were to do survey work to reopen the said road, the survey work was being directly done to parcels that belonged to people who were contrary to your letter dated 18th September 1979, Ref. OCC. LND.16/3/ Vol. VI(34) addressed to the land survey officer Kajiado...
-Kindly be informed that no intruding will be allowed on registered parcels Ngong/ Ngong/11488, 11489, 11490 and 2617 as the said parcels were exempted in your letter dated 18th September 1979. Also bearing in mind in mind that this a matter that was before the High Court of Kenya in Nairobi and had been determined...”
19. In this letter, the Plaintiff indicates that the matter was determined by the High Court. However, this Court was not given copy of the decision to appraise itself on what the issues and/or dispute was about so as not to make adverse orders on an issue that has been determined by a Court of competent jurisdiction.
20. In my view, it is not clear if the issue is the creation of a new access road, re-opening of an access road that was initially in existence or a boundary determination.
21. I find that the Plaintiffs failed to adduce sufficient evidence to warrant this court to grant the reliefs sought.
22. The Defendant failed to enter appearance and thereby defend the suit. The fact that the suit has not been opposed means that the plaintiff's evidence remain unchallenged and uncontroverted. However the plaintiffs were still required to prove their case to the required standard of a balance of probability. See the case of *Shanebal Limited Vs. County Government of Machakos* (2018) eKLR.
23. In the case of *Kenya Power & Lighting Co. Ltd Vs. Nathan Karanja Gachoka & Another* (2016) eKLR the court stated;
- “I am of the opinion that uncontroverted evidence must bring out the fault and negligence of a defendant, and that a court should not take it as truthful without interrogation for the



reason only that it is uncontroverted. A plaintiff must prove it's case too upon a balance of probability, whether the evidence is unchallenged or not.”

24. It was not clear from the evidence presented by the plaintiff, whether this was the creation of a new access road reopening of the access road that was initially in existence.
25. The upshot of the matter is that the plaintiffs have failed to prove their case as against the Defendant on a balance of probabilities.
26. In conclusion the plaintiffs' suit is dismissed with no orders as to costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 10TH DAY OF JULY 2025.

L. KOMINGOI

JUDGE.

In The Presenc E Of:

Ms. Wambua for Mr. Opiyo for the Plaintiffs.

N/A for the Defendant.

Court Assistant – Mateli.

