



**Obonyo v County Executive Committee Member Roads and
Public Works & another (Environment and Land Case 51 of 2021)
[2025] KEELC 6057 (KLR) (18 September 2025) (Judgment)**

Neutral citation: [2025] KEELC 6057 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYAMIRA
ENVIRONMENT AND LAND CASE 51 OF 2021
DO OHUNGO, J
SEPTEMBER 18, 2025**

BETWEEN

EVANS MOMANYI OBONYO PLAINTIFF

AND

**COUNTY EXECUTIVE COMMITTEE MEMBER ROADS AND PUBLIC
WORKS 1ST DEFENDANT**

COUNTY GOVERNMENT OF NYAMIRA 2ND DEFENDANT

JUDGMENT

1. Proceedings in this matter commenced on 9th March 2017, before ELC at Kisii, when the Plaintiff filed Plaintiff dated 8th March 2017. The matter was later transferred to this court, hence its current case number. The initial Plaintiff underwent several amendments, resting with “Re-Amended Plaintiff” dated 28th December 2022.
2. The Plaintiff averred in the Re-Amended Plaintiff that he was the legal representative of the estate of Esther Osebe Obonyo (deceased) who was the registered proprietor of the parcel of land known as Gesima Settlement Scheme/191 (the suit property). That the Defendants trespassed on the suit property, destroyed mature eucalyptus trees and constructed a road of access on a 0.74 hectare portion of the suit property thereby causing great loss and damage.
3. The Plaintiff further averred that there was no access road through the suit property prior to 2nd March 2017 when the trespass and construction took place. The Plaintiff therefore sought judgment against the Defendants jointly and severally for:
 - a. An order of permanent injunction do issue restraining the Defendants by themselves, agents, servants and/or anybody claiming under them from doing further damage by way of



constructing a new road across the Plaintiff's land parcel known as L.R No. Gesima Settlement Scheme/191 pending the hearing and determination of this suit.

- b. That the Plaintiff further claims for compensation of the section damaged and of the trees.
 - bb). The Plaintiff claims for adequate compensation of the section damaged measuring 0.74Ha with a market value of Kshs. 10.5 million and the damaged trees whose market value is Kshs. 5.5million all totalling to Kshs. 16million failure to which the access road be closed and compensation do issue for damage caused and the distrabance (sic) allowance of Kshs. 2.4 million all totalling Kshs. 18.4 million.
 - c. General damages for trespass upon private property.
 - d. Costs and interests in this suit.
 - e. Any other alternative relief that this Honourable Court may deem fit to grant.
4. The Defendants filed a Memorandum of Appearance dated 30th March 2017. Despite being given several opportunities, they neither filed a defence nor complied with Oder 11 of the Civil Procedure Rules.
5. At the hearing, the Plaintiff testified as PW1 and adopted his witness statements as his evidence in chief. He stated that he was the administrator of the estate of Esther Osebe Obonyo (deceased), his mother who passed away on 27th November 2011. That the deceased was the registered proprietor of the suit property and that on 2nd March 2017, the Defendants entered the suit property without consent and forcefully constructed a road across it. That the Defendants also damaged trees.
6. The Plaintiff further testified that he instructed a valuer who assessed the value of the affected 0.74 hectares at KShs 10,500,000, the damaged trees at KShs 5,500,000 and a disturbance allowance of KShs 2,400,000 thereby bringing the total damage to KShs 18,400,000. He produced copies of letters of administration ad litem issued on 3rd March 2017, title deed in respect of the suit property, certificate of official search dated 2nd March 2017, extract of map in respect of Gesima Settlement Scheme, Land Registrar's report dated 13th October 2017 and County Surveyor's report dated 6th November 2017. He also testified that the Defendants uprooted many trees to pave way for the road and that the trees had been planted in the 1980s and 1993.
7. David Ongori (PW2) testified that he was a private land valuer practicing as Damon Appraisers Ltd in Kisii town. That he visited the suit property on 1st April 2018 for purposes of assessing the land that had been excised and the destroyed trees thereon. He added that he compiled a report dated 4th April 2018 which he then produced. He further testified that he obtained information of the number of destroyed trees and tea bushes from the Plaintiff and that he saw tree stumps on the sides of the road. He also stated that the value in his report was an estimation and that apart from the information given to him by the Plaintiff, he could not ascertain the number of affected trees or their sizes. That he did not measure the dimensions of the road but relied on the report of the County Surveyor which stated that the affected area was 8 metres by 370 metres which translated to 0.3 hectares or 0.74 acres.
8. Martin Osano (PW3), the Land Registrar, Nyamira testified that he was conversant with land parcels numbers Gesima Settlement Scheme/190 and 191. He produced a report dated 13th October 2017 which he stated was authored by Charles Mutura who was his immediate predecessor. He added that according to the report, there was an access road on the suit property as of the date of the report and that there was previously no such road.



9. Oganda Francis (PW4) testified that he was the Assistant County Surveyor in Nyamira County and that he visited the suit property on 12th October 2017 after which authored a report dated 6th November 2017. He produced the report and stated that as of the date of his visit, there was a new passable road on the suit property and recently uprooted eucalyptus trees.
10. The plaintiff's case was the closed. Despite being given several opportunities, the Defendants did not proceed with defence case. Ultimately, defence case was closed on 28th January 2025. Prior to the said closure, the Defendants sought leave to file a counter valuation report. Leave was granted on 7th November 2023. It was not until 30th July 2024 that the report was filed.
11. Directions were given that parties file and exchange written submissions. The Plaintiff filed submissions dated 10th March 2025. The Defendants did not file any submissions despite being given several opportunities to comply.
12. I have considered the pleadings, the evidence and the submissions. The Plaintiff's case has not been challenged by the Defendants through any statement of defence, any testimony or submissions. The sole issue for determination is whether the reliefs sought should issue.
13. From the material on record, I am satisfied that the deceased was registered as the proprietor of the suit property on 22nd September 1995 and title deed issued to her on 2nd October 1995. The suit property measures hectares. The certificate of official search dated 2nd March 2017 confirms that the deceased remained the registered proprietor as of 2nd March 2017.
14. I have also perused the copy of letters of administration ad litem issued on 3rd March 2017 and I am satisfied that the deceased passed away on 27th November 2011 and that the Plaintiff has the legal capacity to bring this suit on behalf of the deceased's estate.
15. The Plaintiff's claims that the Defendants trespassed into the suit property and constructed a road thereon without authorisation have not been contested. A perusal of the reports by both the Land Registrar and the County Surveyor confirm that there was no provision for any public road on the suit property prior to the Defendants' impugned actions. As explicitly stated by the County Surveyor in his report and supported by a sketch, the suit property was intact and had never been subdivided. A previously existing access road terminated at the boundary of the suit property. The County Surveyor's report is proof enough that the Defendant's excavated an area of the suit property measuring 8 metres by 370 metres translating to 0.30 hectares and created a road thereon. Clearly, that was a violation of the rights of the deceased's estate as a registered proprietor. I am satisfied that the Plaintiff has established trespass.
16. The Plaintiff has on one hand sought judgment for the value of the affected 0.74 acres as well as value of damaged trees and on the other hand a permanent injunction to restrain the Defendants from constructing the road. He cannot have his cake and eat it. Having sought the value of the land, the Defendants must be left to enjoy the land and fully use the road. The Defendants will have to regularise and secure the public's title and rights over the land.
17. I have also perused the valuation report by Damon Appraisers Ltd dated 4th April 2018. The said valuers assessed the value of the affected 0.74 acres at KShs 10,500,000, the damaged trees at KShs 5,500,000 and a disturbance allowance of KShs 2,400,000. The valuers assessed the total damage at KShs 18,400,000. These figures have not been controverted by the Defendants. Whereas the Defendants filed a valuation report, the said report was not produced in evidence and is therefore of no consequence. I am satisfied that the sum of KShs 18,400,000 has been proven.



18. In his submissions, the Plaintiff sought general damages of KShs 1,500,000. The law is that trespass to land is actionable per se without requiring proof of any damage. See *Christine Nyanchama Oanda v Catholic Diocese of Homa Bay Registered Trustees* [2020] KECA 536 (KLR). Considering the entire circumstances of the case including the other sums claimed, I consider that KShs 1,500,000 is on the higher side and that a sum of KShs 500,000 as damages for trespass is reasonable.
19. In the result, I find merit in the Plaintiff's case. I am alive to the fact that the Plaintiff moved this court through letters of administration ad litem as opposed to a full grant. Consequently, the benefits of the litigation go to the estate of Esther Osebe Obonyo (deceased) and not the Plaintiff personally.
20. I enter judgment against the Defendants jointly and severally in favour of the estate of Esther Osebe Obonyo (deceased) as follows:
 - a. KShs 18,900,000 (Eighteen Million Nine Hundred Thousand) made up as follows:
 - i. KShs 10,500,000 (Ten Million Five Hundred Thousand) being the value of the affected 0.74 acres.
 - ii. KShs 5,500,000 (Five Million Five Hundred Thousand) being the value of the damaged trees.
 - iii. KShs 2,400,000 (Two Million Four Hundred Thousand) being disturbance allowance.
 - iv. KShs 500,000 (Five Hundred Thousand) being general damages for trespass.
 - b. The estate of Esther Osebe Obonyo (deceased) shall also have costs of the suit and interest.

DATED, SIGNED, AND DELIVERED AT NYAMIRA, THIS 18TH DAY OF SEPTEMBER 2025.

D. O. OHUNGO

JUDGE

Delivered in the presence of:

Mr Anyona for the Plaintiff

Ms Moeche for the Defendants

Court Assistant: B Kerubo

