



**Achola & another v Musungu (Environment & Land Case
63 of 2015) [2024] KEELC 5199 (KLR) (10 July 2024) (Ruling)**

Neutral citation: [2024] KEELC 5199 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT BUSIA
ENVIRONMENT & LAND CASE 63 OF 2015**

**BN OLAO, J
JULY 10, 2024**

BETWEEN

REBECCA M MBONE ACHOLA 1ST PLAINTIFF

ARGWINGS MILLAN ACHOLA 2ND PLAINTIFF

AND

MARGARET TABU MUSUNGU DEFENDANT

RULING

1. The dispute between Rebecca M. Mbone and Argwings Millan Achola (the 1st and 2nd Plaintiffs respectively) and Margaret Tabu Musungu (the Defendant) was in regard to the claim by the Plaintiffs that the Defendant who is the proprietor of the land parcel No Bukhayo/Bugengi/7902 had blocked the road of access to their land parcel No Bukhayo/Bugengi/7903 by constructing a pit latrine and kitchen thereon. The Defendant denied that claim and instead filed a counter-claim of her own alleging that the Plaintiffs and the County Surveyor Busia one Julius Manwari had in fact colluded to create a road of access on her land.
2. Having heard the parties, this court rendered its judgment on 16th November 2023 and found in favour of the Plaintiff. The following disposal orders were issued:
 1. The Defendant's counter-claim is dismissed.
 2. There shall be judgment for the Plaintiffs against the Defendant in the following terms:
 - a. The defendant shall within 60 days of this judgment demolish the pit latrine and kitchen erected on the access road leading to the land parcel No Bukhayo/Bugengi/7903.
 - b. In default of (a) above, the Plaintiff shall be at liberty to demolish the said structures in order to open the access road.



- c. Thereafter, the defendant, her servants, agents and any persons acting through her shall be permanently enjoined from obstructing the access road leading to the land parcel No Bukhayo/Bugengi/7903.
- d. The defendant shall bear the costs of the plaintiffs' suit and the dismissed counter-claim.

A decree was drawn and there is no evidence to suggest that the Defendant preferred any appeal against the judgment.

3. It is clear however that the defendant did not comply with paragraph 2(a) of the above disposal orders. That non-compliance with the order of this court has prompted the plaintiffs to return to this court vide their Notice of Motion dated 31st May 2024 citing the provisions of Order 22 Rule 1 and Order 51 Rule 1 of the Civil Procedure Rules seeking the following orders;
 1. Spent.
 2. That the County Surveyor be ordered to visit the road of access affecting the plaintiffs and defendant's parcels of land namely Bukhayo/Bugengi/7902 and 7903 respectively and re-establish the boundaries of the road of access and re-plant the beacons.
 3. That after the re-establishment of the said road of access, the plaintiff to pull down all the structures on the road of access using their agents assisted by the Officer Commanding Busia (OCS) Police Station.
 4. That the Officer Commanding Busia (OCS) Police Station to provide security during the re-survey and re-establishment of the road of access and during the removal of the illegal structures on the road.
 5. That costs of this application be provided for.
4. The application is founded on the grounds set out therein and supported by the affidavit of the 1st plaintiff.
5. The gravamen of the application is that following this court's judgment and the resultant decree, the defendant has defied the court's orders and refused to demolish the structures on the access road. The plaintiffs intend to engage people to demolish the said structures and need the police to provide security hence this application.
6. When the application was placed before Cheron J on 6th June 2024, he directed that it be canvassed by way of written submissions to be filed and served by the plaintiffs within 7 days and thereafter, the defendant to respond within 14 days of service. The matter would then be mentioned before me on 8th July 2024 to confirm compliance and for further directions.
7. When the matter came up before me on 8th July 2024, only Mr Onsongo instructed by the firm of Obwoye Onsongo & Company Advocates for the plaintiffs had filed his submissions. An affidavit of service dated 13th June 2024 confirms that the firm of Musungu Pekke & Company Advocates for the defendant were served with the application, the orders of Cheron J and the plaintiffs' submissions on 12th June 2024. However, the defendant is yet to file any response or submissions.
8. I have considered the plaintiffs' application un-opposed as it is. The judgment of this court is very clear as to the disposal orders. To-date, the defendant has neither complied with those orders with regard to the demolition of the structures on the access road nor has she appealed that decision. The result is that the plaintiffs are unable to enjoy the fruits of their judgment. Unless this Court intervenes by



granting the orders sought, the judgment will remain hollow. That should not be the case and when a Decree Holder approaches the Court to have the judgment executed, as the plaintiffs have done, the court must play its role in facilitating him effectuate the same because Court orders are not issued in vain. In this case, the defendant has neither appealed the judgment nor opposed the application. The court has no option but to grant the orders sought.

9. The up-shot of all the above is that having considered the Notice of Motion dated 31st May 2024, this court makes the following orders:
 1. The Notice of Motion dated 31st May 2024 is allowed.
 2. There shall be no orders as to costs.

BOAZ N. OLAO

JUDGE

10TH JULY 2024

RULING, DATED, SIGNED AND DELIVERED ON THIS 10TH DAY OF JULY 2024 BY WAY OF ELECTRONIC MAIL WITH NOTICE TO THE PARTIES.

BOAZ N. OLAO

JUDGE

10TH JULY 2024

