



**Aboki v Nyamira County Government (Environment & Land Case
58 of 2021) [2023] KEELC 22616 (KLR) (5 June 2023) (Judgment)**

Neutral citation: [2023] KEELC 22616 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYAMIRA
ENVIRONMENT & LAND CASE 58 OF 2021**

JM KAMAU, J

JUNE 5, 2023

BETWEEN

ENOCK OGECHI ABOKI PLAINTIFF

AND

NYAMIRA COUNTY GOVERNMENT DEFENDANT

(Formerly at Environment and Land Court at Kisii Case No16 of 2018)

JUDGMENT

1. The Plaintiff has brought this suit against the County Government of Nyamira in his capacity as the legal representative to the Estate of his late father, Clement Aboki who died on May 19, 1998 and who was the registered owner of LR No Central Kitutu/mwamokaya 1/442 measuring 2.9 Acres with trees he avers are estimated at Kshs 8.1 Million when fully grown. The Plaintiff claims that on June 9, 2017 the Defendant uprooted the said trees while illegally constructing a second road through the said land. The Plaintiff therefore prays for: -
 - a. A Declaration that the Defendant is a trespasser into Land Parcel No Central Kitutu/mwamokaya 1/442.
 - b. That permanent injunction do issue restraining the Defendants from making further construction and/or use of the said rural road.
 - c. Reasonable compensation for loss of trees, damaged ground and general damages for trespass.
 - d. Costs of the suit.
2. On her part the Defendant denied the entire claim. She even denied the existence of the aforesaid trees and/or that the same were worth Kshs 8.1 Million and puts the Plaintiff to strict proof thereof. Having



- denied that she destroyed the gum trees as alleged by the Plaintiff, the Defendant prays that the suit be dismissed with costs.
3. On October 31, 2018, the Plaintiff amended the Plaintiff to increase the value of the uprooted trees to Kshs 39 Million and to specifically give the width of the constructed road to 45 feet and the length to 360 feet. The Defendant still denied the claims. The final amendment of the Plaintiff, the further amended Plaintiff, was filed on March 23, 2022 to include in the prayers Special Damages for loss of 1,601 and amended the length of the road to 448 feet. The suit was then set down for hearing.
 4. On February 14, 2023, the Plaintiff took to the witness box and in his examination in chief he testified that the destruction of the trees took place on June 9, 2017 at around 11.00a.m. When the demolishing machines came he tried to resist but all in vain. He was overpowered. He testified that the Defendant destroyed his 1,601 gum trees on the suit land on the 448 feet by 45 feet being part of the suit land. He produced the Government Surveyor's Report, letter by CA Okenye Advocates dated June 25, 2021 and minutes dated June 29, 2021. Earlier on Bernard Ondari, an extension officer in Masaba North Sub-County testified. He said the land is located in his area of operation. He testified that he was instructed to go and value the destroyed trees on the suit land by the chief, Miriri location. He testified that there was a road running across the land and that the trees thereon had been buried under the soil on a 150 metres and 15 metres sketch. He counted the trees which totaled 1,601 which were about 2 years old. He assessed the cost of the destroyed trees at Kshs 36,000,000/= and 3.2 Million for the land on which the access road was situate making it a total of Kshs 39,200,000/=. He then produced the Report in court. On cross examination, Mr Ondari said that he was a qualified Agricultural officer from Bukura Agricultural College with a Diploma in Agriculture obtained in 1996. He admitted that he is not a qualified valuer and that the Report was labelled as a Damage Assessment Report.
 5. After the close of the Plaintiff's case, Mr Nyagarama for the Defendant placed Mr Lameck Nyariki, the Assistant Director of physical and Land Planning in the County Government of Nyamira who was at the time of testifying the acting Director on the dock. He relied on his written statement dated February 13, 2023. He admitted that the offensive road was constructed in 2017 following demand from the people of Miriri after several community meetings. The County Assembly endorsed the decision. He said that there existed another road on the suit land but which would not have served the intended purpose since due to its gradient it is not motorable. The community around therefore demanded its re-location.
 6. The Director showed the court a letter dated March 16, 2023 and a response from the Plaintiff's Advocates dated June 25, 2021 showing their willingness to compensate the Plaintiff who he said had not expressed any objection to the re-location of the road. He said that the road measures 6 metres by 360 feet, approximately 0.36 Acres. The price index is about Kshs 400,000/= per Acre for that area. On cross-examination by Mr Okenye for the Plaintiff, the witness said that he had no valuation Report. He said that initially the road was meant to give access to the river but that now it served more public purposes. There is a High School, Primary School and a dispensary to be served by the new road. He said that compensation takes a different dimension and that this road enhanced the value of the land belonging to the Plaintiff. On re-examination from Mr Nyagarama for the Defendant, the witness said that the Defendant was willing to pay the Plaintiff Kshs 3,000,000/= in compensation. He said that the uprooted trees were at most 700 to 800.
 7. The 2nd Defendant's witness was Mr Zachariah Chisito Ondieki Ocharo, Chief works Officer. He said that the family that owns the land across which the access road cuts was consulted and that they had no objection to the same and the maximum number of trees that were uprooted should number 600 to 700 and no more. But when they were small they could have been 1,600 at most. On cross-examination



he said that the old road was too steep for use. They were ready to pay Kshs 3 Million to Kshs 4 Million unless advised otherwise by the Government Valuer. On re-examination he said he is not a valuer.

8. The Defendant admitted that there was acquisition of the Plaintiff's parcel of land measuring 6 metres by 360 feet, approximately 0.36 of an Acre and places the price index of the area and Kshs 400,000/= per acre. But he never produced any valuation Report. The Defendant's witness also said that the Defendant was willing to compensate the Plaintiff for the loss of his land at Kshs 3,000,000/= to 4,000,000/=, that the uprooted trees were at most 700 to 800. In the absence of any report which put the trees at 1,601. And since they were only 2 years old, I would give each tree a value of Kshs 3,000/= giving it a total of Kshs 5,603,500/=. As for the value of the land, I award the Plaintiff Kshs 750,000/= bringing the total figure to Kshs 6,353,500/=. I will also grant him the costs of the suit together with interest on both at court rates with effect from the date of filing this suit to payment in full.

JUDGMENT DATED, SIGNED AND DELIVERED AT NYAMIRA THIS 5TH DAY OF JUNE 2023.

MUGO KAMAU

JUDGE

In the Presence of: -

Sibota - Court Assistant

Mr. Okenye for the Plaintiff

Mr. Nyagarama for the Defendant:

