



Songok v Kenya Rural Roads Authority (Environment & Land Case 122 of 2015) [2023] KEELC 18945 (KLR) (11 July 2023) (Ruling)

Neutral citation: [2023] KEELC 18945 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ENVIRONMENT & LAND CASE 122 OF 2015**

JM ONYANGO, J

JULY 11, 2023

BETWEEN

ROBINSON SONGOK PLAINTIFF

AND

KENYA RURAL ROADS AUTHORITY DEFENDANT

RULING

1. On April 28, 2015, the Plaintiff instituted this suit against the defendant claiming that the defendant had unlawfully gained forceful entry into the plaintiff's land parcel number Turbo Settlement Scheme /124, dug trenches, destroyed existing beacons and started constructing a road thereon. He therefore sought a permanent injunction restraining the defendant from interfering with his land.
2. The defendant filed a Statement of defence dated June 23, 2015 denying the Plaintiff's claim and alleged that the plaintiff had encroached on the Jua kali-Sugoi –Elgon Estate road (E306) and E306-Atlas (A104) road reserve by 0.388 acres and that he had fenced part of the road reserve.
3. When the matter came up for mention on December 9, 2015, the court noted that the dispute revolves around alleged encroachment by the defendant onto the plaintiff's land. The court then directed the Land Registrar and County Surveyor Uasin Gishu County to visit the disputed parcel of land number Uasin Gishu/ Turbo Settlement Scheme /124, to ascertain the extent of the road and file a report. The defendant Survey was ordered to pay the costs of the survey.
4. The County Surveyor subsequently filed a report in court dated December 21, 2018. While the defendant was in agreement with the findings of the report, the plaintiff strongly objected to the report terming it erroneous or forged as the plaintiff was not notified when the surveyors went to the ground.
5. The County surveyor who was summoned to attend court to shed more light on the report indicated that before visiting a site, they are supposed to summon the owners of the land to be present during the site visit. In the instant case, he could not tell whether the parties were summoned as the report



does not indicate who was in attendance nor does it mention the date when the survey was done. Both parties however denied having attended the site visit.

6. Although report is accompanied by a sketch map and indicates the extent of encroachment by the plaintiff, it does not state whether ground measurements were taken. Unfortunately, the County Surveyor who attended court was not based in Eldoret when the survey was conducted in 2018 and he was therefore not able to respond to some questions.
7. In order for the court to adopt the report as a judgment of the court, the court must be satisfied that the parties were given a fair hearing. It is a cardinal principle of law that justice must not only be done, but must be seen to be done. In the instant case, the manner in which survey was conducted without the participation of the parties leaves a lot of room for speculation and does not inspire confidence in the report. The interests of justice would therefore not be served if the report was adopted by the court.
8. In the circumstances, I direct that a new survey be conducted and I make the following orders;
 - a. That the Land Registrar and County Surveyor Uasin Gishu County conduct a fresh survey on land parcel No. Uasin Gishu/Turbo Settlement Scheme/124 for purposes of establishing whether the said parcel of land has encroached on the road reserve or vice versa.
 - b. The survey exercise shall be conducted in the presence of both parties.
 - c. The costs of the survey shall be shared equally between the parties.
 - d. The report shall be filed in court within 45 days.

SIGNED, DATED AND DELIVERED VIRTUALLY THIS 11TH DAY OF JULY 2023

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J.M ONYANGO

JUDGE

In the presence of;

Mr. Osewe Atieno for the Plaintiff

Mr. Korir for Mr. Rapando for the Defendant

Court Assistant: A. Oniala

