



**Nyaema v County Government of Nyamira & another (Environment & Land Case 45 of 2021) [2023] KEELC 21394 (KLR) (9 November 2023) (Judgment)**

Neutral citation: [2023] KEELC 21394 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NYAMIRA  
ENVIRONMENT & LAND CASE 45 OF 2021**

**JM KAMAU, J**

**NOVEMBER 9, 2023**

**BETWEEN**

**NELSON ANYOKA NYAEMA ..... PLAINTIFF**

**AND**

**COUNTY GOVERNMENT OF NYAMIRA ..... 1<sup>ST</sup> DEFENDANT**

**ATTORNEY GENERAL ..... 2<sup>ND</sup> DEFENDANT**

**JUDGMENT**

1. In the Amended Plaint dated 26/2/2014 the Plaintiff, Nelson Anyona Nyaema sued the County Government of Nyamira and the Honourable Attorney General for: -
  - a. An order of eviction from and vacant possession of the parcel of Land known as North Mugirango/bokeira/II/432.
  - b. A permanent injunction restraining the defendants whatsoever from interfering with the aforesaid parcel of land.
2. He avers that he was at all material times the registered proprietor of the suit land. However, in or about June 2007 the 1<sup>st</sup> Defendant unlawfully and without the Plaintiff's consent and / or authority entered into the suit property and converted it to her own use as an open air market.
3. The 1<sup>st</sup> Defendant entered appearance on 16/7/2014 and filed a Statement of Defence which was amended on 20/12/2014 denying the Plaintiff's claim in its entirety and in the alternative averred that the parcel of land North Mugirango/bokeira Ii/405 is a livestock market.
4. On 9/5/2016 the 2<sup>nd</sup> Defendant filed a Statement of Defence denying that the suit land has ever been registered in the Plaintiff's name and that the same was meant to be an open air market.



5. On 26/9/2016 the Honourable Mr. Justice. John Mutungi ordered that the Land Registrar, Nyamira and the County Surveyor do visit the 2 parcels of land to establish the dimensions and boundaries of land and to compile and file a Report in Court together with the Registry Index Maps (RIM) showing the position and deliberations for the 2 and file in Court within 90 days. The period was extended by a further 60 days with effect from 20/2/2017. This Report was filed in Court on 3/4/2018 and was summed up as follows: -

“It is our view that the claimed land does not form part of parcel number North Mugirango/Bokeira II/432 and the complainant (Plaintiff) has actually encroached on a public road at the foot of their parcel. The change of which gives the complainant hopes that the new road was the boundary and his parcel extended upto that part”

6. On 26/9/2018 the Court directed that the matter proceeds to full trial and that the Land Registrar and County Surveyor’s Report do form part of the record of the court and either party may choose to call the technical experts to produce and /or adduce evidence on the basis of the report.
7. The County Surveyor Nyamira, Mr. Robert Atika Torori testified that there is a road that separates the 2 parcels of Land which should be 10 metres wide. It is in the Registry Index Map (RIM) although it does not exist on the ground. The owner of North Mugirango/bokeira II/432 has encroached on it by putting up some mabati structures. Before the sub division was done the whole land, parcel was identified as North Mugirango /bokeira II/432. There is nothing in the survey map that shows that the Plaintiff’s Land goes beyond the 10 metres wide. After the 20 metre road there is Parcel No. Magwagwa II/405 belonging to the 1<sup>st</sup> Defendant. He summed up his testimony by saying that the encroachment by the Plaintiff does not reach the 1<sup>st</sup> Defendant’s Land. Mr. Charles Mutua, the Land Registrar also took to the witness stand. He did duplicate the evidence of the County Surveyor. He further added that the road had a sharp corner so that it shifts to parcel number North Mugirango/magwagwa/405 belonging to the County Government of Nyamira. And that the 2 parcels are in distinct registration sections with distinct boundaries and that there is no way the County Government Land can form part of the Plaintiff’s Land. He also said that it is the Plaintiff who has encroached into the road. The Plaintiff’s Land ended where the road started. Solomon Njoga, a private Surveyor from Geoflex Consultants who was instructed by the Plaintiff to establish the boundary between the 2 parcels of land testified that the disputed boundary has a discrepancy of 4 metres and that there is no encroachment by either party. There is an old road of 10 metres wide which is still intact. He also said that North Mugirango/bokeira II/432 is slightly longer on the ground than on the map by 4 metres and that it does not overlap on the side of Magwagwa. He confirmed that the 1<sup>st</sup> Defendant has not encroached onto the Plaintiff’s land.
8. The Court delivered a Ruling on 21/2/2020 and held that the 2 parcels of land are separate and distinct but that the question of transfer by the Defendants was not adequately addressed. The Court further held that there was need to visit the locus in quo to establish whether or not the Plaintiff has /had encroached on the 10 metres wide road. The visit was held and the Land Registrar and County Surveyor filed their Reports on 8/12/2021. The same is dated 24/11/2021. On 26/2/2022 the Court ruled that the Land Registrar, the County and Private Surveyors do appear in Court for cross examination on their Reports.
9. On 27/4/2022 Pw1 Nelson Anyoka Nyaema, the Plaintiff herein gave evidence to the effect that he used to hire the premises on North Mugirango/bokeira II/432 until the County Government staff came and started uprooting the trees there on 14/06/2006. This was on a 1 Acre Plot. The staff also destroyed his building materials at the vacated premises. He said that he had not been warned of the



- demolition. He said that the 1<sup>st</sup> Defendant has now established a market therein. He testified that North Mugirango/bokeira/432 belongs to him and he indeed produced a copy of Title Deed, a copy of official search and a green card as proof of ownership and a number of sketch maps.
10. Mr. Yogi Moya PW2, a neighbour to the Plaintiff testified that the County Council of Nyamira did enter into the Plaintiff's land and destroyed his buildings therein. He said that the suit land is in Bokeira and the land surrendered to the 1<sup>st</sup> Defendant is in Magwagwa.
  11. PW3, Cosmas Mogaka Nyakieya said that the suit land belongs to the Plaintiff and that there is an access road between the land and the market in Magwagwa. He said that the access road is still intact.
  14. PW4, Hezekiah Okello Nyaema a brother to the Plaintiff testified that the 1<sup>st</sup> Defendant had uprooted boundary features and started a market on the suit land. He said that his land is in the neighbourhood of the suit land.
  12. Solomon Njoga, PW5, a Licensed Surveyor based in Kisii testified that there is a very distinct boundary between the 2 parcels of land LR. NO. North Mugirango/magwagwa 11/405 and North Mugirango/bokeira II/432 with a 10 metre road separating the two since 1973.
  13. After the close of the Plaintiff's case, Mr. George Kariuki Maina, the Land Registrar Nyamira testified on behalf of the Defendants and produced mutation forms in respect of North Mugirango/bokeira II/370 which was subdivided into North Mugirango/bokeira II/432 among others, the latter measuring 0.0945 Hectares in the mutation form but according to the Government the same measures 0.1248 Hectares. He did produce the green card as part of the acreage on record. He also produced a copy of the mutation forms as well as the R.I.M for Bokeira II Registration Sheet Nos. 1 and 17. He testified that North Mugirango/magwagwa/405 belongs to the 1<sup>st</sup> Defendant and that the Plaintiff is bent on encroaching into the 1<sup>st</sup> Defendant's land.
  14. Robert Torori, the County Surveyor, Nyamira also corroborated the Land Registrar's evidence and added that between the 2 parcels of land there is a road which is 10-metre-wide and that the Plaintiff's parcel of land does not go beyond the road of access.
  15. From the above evidence I find that the Plaintiff has not proved his case on a balance of probabilities. The Evidence of Mr. Maina, the Land Registrar, who is the custodian of land ownership documents in the County was not controverted. It clearly states that the Plaintiff's case is unfounded. Consequently, I dismiss this suit with costs.

**JUDGMENT READ, SIGNED AND DELIVERED IN OPEN COURT THIS 9<sup>TH</sup> DAY OF NOVEMBER, 2023.**

**HON. MUGO KAMAU**

**JUDGE**

**In the Presence of: -**

Court Assistant -Brenda

Plaintiff in person

Ms Bonareri for 1<sup>st</sup> Defendant

Mr. Ranah for the 2<sup>nd</sup> Defendant

