



**Muma v Kworo (Environment & Land Case 1208 of 2016)  
[2022] KEELC 149 (KLR) (4 May 2022) (Ruling)**

Neutral citation: [2022] KEELC 149 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KISII  
ENVIRONMENT & LAND CASE 1208 OF 2016**

**JM ONYANGO, J**

**MAY 4, 2022**

**BETWEEN**

**PAUL ORANGA MUMA ..... PLAINTIFF**

**AND**

**DOMINIC MUMA KWORO ..... DEFENDANT**

**RULING**

1. In its Ruling delivered on 14<sup>th</sup> June 2019, the court adopted the report of the Land Registrar and County Surveyor dated 1<sup>st</sup> August, 2018 as the judgment of the court. The said report was made pursuant to the court’s directions issued on 2<sup>nd</sup> October, 2017 which were as follows:

“The Court notes that the pleadings herein relate to a dispute respecting the positioning of the roads of access between land parcels WEST KITUTU/BOMATARA/1219 and 3113. Although a previous Surveyor’s report was not adopted by the Court, it is clear that this is a matter that falls within the mandate of the Land Registrar and County Surveyor to resolve under sections 18 and 19 of the *Land Registration Act*, 2012. Accordingly, the Land Registrar Kisii and the County Surveyor are ordered to visit the two parcels of land and to delineate and establish the road of access serving the two parcels of land. The Land Registrar and Surveyor to file their report within the next 90 days from today. Mention on 21<sup>st</sup> February, 2018 for further directions”.

2. Pursuant to the above-mentioned order the Land Registrar and County Surveyor, Kisii visited the suit properties and filed a report dated 1<sup>st</sup> August, 2018 in which they made the following observations:

“The suit parcels are found on sheet number 15 of Bomatara Registration Section. Some roads were closed on the ground, while others have been diverted through people’s parcels of land.



From the scaled distances and correlating measured ground distances, we were able to delineate and establish the access road serving the two parcels.

It was observed that the access road which was marked on the ground which was not existing before actually separates the suit parcels.

There was a problem with the position of the major road from the tarmac road to the suit parcels. The defendant's parcel of land could not touch this road as we demarcate on the ground, yet on the map, his land was touching this road. Forcing the Defendant's land to reach this road could have given him undue advantage against the Plaintiff as this stretch was approximately 50m long and 20 m wide.

On implementing this order, we exercised due diligence to protect the actual sizes and/or acreage of the suit parcels.”

3. The court adopted the said report as the judgment of the court and directed that the report be implemented such that parcel boundaries identified on the ground by the Land Registrar and County Surveyor should be honoured. The court directed that the road of access that had been identified by the officers on the ground be opened and in case there was variance between the map and the ground position, the Land Registrar and Surveyor ought to make the necessary amendments to their records in conformity with the law.

4. The Court further observed as follows:

“I am conscious that unless the report is timeously implemented, the dispute that has been alive since 2008 when the present suit was filed will continue and only by implementing the report will the dispute be finally put to rest.

The net effect is that the Plaintiff has been successful but as the report by the Land Registrar and the Surveyor attests, there has been a measure of confusion on the ground as some roads of access are said to be non-existent on the ground and others have been diverted through peoples' parcels of land. The Defendant may not have been entirely to blame and on that account even though encroachment onto the Plaintiff's land has been proved, I do not find any basis to award general damages for trespass as sought by the Plaintiff. The parties including any neighbours who may be affected would in fact benefit from the implementation of the report as their boundaries and roads of access would be officially re-established.”

5. In the instant application, the Plaintiff/Applicant seeks the following orders:

- a) Spent
- b) An order of eviction do issue for the Defendant/ Respondent who is in continuing trespass and illegal occupation of the Plaintiff/Applicant's parcel of land L.R No. WEST KITUTU/ BOMATARA/3113.
- c) The road of access identified by the Land Registrar and Surveyor in their report on the ground be opened by the Defendant/Respondent at his cost.
- d) The Land Registrar and Surveyor to make necessary amendments to their records in conformity with the law as decreed by the court.
- e) Costs of this application and eviction be borne by the Defendant/Respondent.



6. When the application came up for hearing on 10<sup>th</sup> December 2020, learned counsel for the Defendant indicated that he had no objection to prayers (c) and (d) but he objected to prayer (b). The parties then entered into a consent with regard to prayers (c) and (d) and agreed that the Land Registrar and Surveyor do visit the suit properties for purposes of opening up the access road identified in their report dated 1<sup>st</sup> August, 2018 and make the necessary amendments to their records.
7. The Land Registrar and Surveyor visited the suit properties and filed yet another report dated 9<sup>th</sup> April, 2021 in which they noted that the boundary separating the suit properties L.R No. WEST KITUTU/BOMATARA/3113 and 1219 had been marked and should not encroach on the road of access opened in conformity with the map.
8. After the report was filed in court, counsels for the parties were directed to file their submissions on the same. While counsel for the Defendant agreed with the findings in the report and contended that it had implemented the judgment, counsel for the Plaintiff was of the view that the report did not implement the judgment as the road of access was not opened and the report was blurred and indecisive as to the trespass which was established by the Court.
9. In view of the said submissions, the court summoned the Surveyor to court to shed more light on the report. The Surveyor was cross-examined by both parties and what came out clearly is that he had not implemented the judgment of the court as he had not been made aware that their earlier report dated 1<sup>st</sup> August, 2018 had been adopted as a judgment of the court. It is therefore no wonder that there seems to be prevarication in their report dated 9<sup>th</sup> April, 2021.
10. In view of the Surveyor's admission that the judgment remains unimplemented, I find merit in the application and I grant it in terms of prayers 3 and 4 of the Chamber Summons dated 27<sup>th</sup> July, 2020 and make the following orders:
  - a. That a copy of the Ruling delivered herein on 14<sup>th</sup> June, 2019 be furnished to the Land Registrar and County Surveyor, Kisii County for their perusal and implementation.
  - b) The road of access identified by the Land Registrar and Surveyor in their report dated 1<sup>st</sup> August, 2018 be opened forthwith in the presence of all parties concerned.
  - c) The Land Registrar and Surveyor to make necessary amendments to their records in conformity with the law as decreed by the court.
  - d) The costs of implementing (a) above and of this application shall be borne by the Defendant/Respondent.
  - e) Parties are at liberty to apply for any further orders if necessary.

**DATED, SIGNED AND DELIVERED AT KISII THIS 4<sup>TH</sup> DAY OF MAY, 2022.**

**J.M ONYANGO**

**JUDGE**

