



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KISII

ELC CASE NO. 206 OF 2016

ELIAS OKENDO NYAMARI.....1ST PLAINTIFF

JOVINALIS NYAMWENO.....2ND PLAINTIFF

JOYCE BIYAKI3RD PLAINTIFF

VERSUS

KISII COUNTY GOVERNMENT.....DEFENDANT

RULING

INTRODUCTION AND BACKGROUND

1. The Plaintiffs filed suit against the Defendants alleging that the Defendants had, without following the laid down regulations with regard to compulsory acquisition and compensation, created a road on the Plaintiff's land parcels known as L.R NO BASSI/BOITANGARE/888; 2182 and 2009 thereby destroying the Plaintiff's trees and crops. In the said Plaint the Plaintiffs seek a permanent injunction restraining the Defendant from creating a new road through the suit properties without following the laid down process of compulsory acquisition and compensation.

2. The Defendant entered appearance on 27th September 2016 but did not file its statement of Defence.

3. When the matter came up for mention on 4th May 2017, the court noted that the dispute involves the position of the road of access as the Plaintiffs claimed that the Defendant had caused a road of access to be opened on their parcels of land without their consent. The court therefore made the following orders:-

(a) That the County Land Registrar and County Surveyor, Kisii do visit the suit properties namely L.R NO BASSI/BOITANGARE/888; 2182 and 2009 to ascertain the following:

i. Verify the position of the access road and in particular, confirm whether the road of access opened by the Defendant affecting the said properties exists on the ground where it was opened.

ii. The Land Registrar to file his report within 60 days.

4. Pursuant the said consent order, the Land Registrar and County Surveyor visited the suit property on 19th July 2017 and filed their report dated 28th July, 2017. In the said report, the County observed that:

“From the map of Boitangare registration section, it is true that the road excavated by the County Government of Kisii at the point of dispute, is right through the parcels of land and not the position where the map has provided the road”

5. The court directed that the parties file their comments on the report but only the Plaintiff filed his comments.

ANALYSIS AND DETERMINATION

6. Having considered the report of the Surveyor in Charge Kisii County dated 28/7/2017 made pursuant to the court order issued by the court on 4/5/2017 and having considered the Plaintiff's comments thereon dated 23/4/2021, I note that the report categorically states that the road of access passes through the Plaintiffs' parcels of land contrary to the map for Boitangare section.

7. Consequently, I hereby adopt the report of the Surveyor in Charge, Kisii County as the judgment of the court as the same settles the issues in dispute.

8. Accordingly, I enter judgment for the Plaintiffs and make the following final orders:

a) The excavation of the road should follow the dimensions of the road provided in the map. Any further excavation that is not in conformity with the map for Boitangare registration section shall cease forthwith.

b) A permanent injunction is hereby issued restraining the Defendants by itself, its agents, servants, employees or anyone acting on behalf from creating a new road through land parcel no. BASS/BOITANGARE/1888, 2182 and 2009 without following the laid down procedure for compulsory acquisition and compensation.

9. The costs of this suit shall be borne by the Defendant.

DATED, SIGNED AND DELIVERED AT KISII THIS 26TH DAY OF MAY, 2021.

J.M ONYANGO

JUDGE