



**Kipsiro & another v County Government of Uasin Gishu (Environment & Land  
Case 42 of 2022) [2025] KEELC 151 (KLR) (22 January 2025) (Judgment)**

Neutral citation: [2025] KEELC 151 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT ELDORET  
ENVIRONMENT & LAND CASE 42 OF 2022**

**JM ONYANGO, J  
JANUARY 22, 2025**

**BETWEEN**

**GRACE NGERINKWONY KIPSIRO ..... 1<sup>ST</sup> PLAINTIFF**

**CHEBET ROTICH ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**THE COUNTY GOVERNMENT OF UASIN GISHU ..... DEFENDANT**

**JUDGMENT**

1. The Plaintiffs commenced this suit vide a Complaint dated 2<sup>nd</sup> August, 2022 against the Defendant seeking the following Orders: -
  - a. A Declaratory Order holding that the Plaintiffs are the lawful owners of land parcel Eldoret Municipality Block 7/255.
  - b. An Order holding that the Defendant has unlawfully encroached on land parcel Eldoret Municipality Block 7/255.
  - c. An Order compelling the defendant to render vacant possession land parcel Eldoret Municipality Block 7/255.
  - d. In default of prayer (c) above, an eviction Order do issue against the defendant from land parcel Eldoret Municipality Block 7/255.
  - e. An order of permanent injunction restraining the defendant by its employees and/or agents from encroaching on land parcel Eldoret Municipality Block 7/255.
  - f. In the alternative, an Order compelling the defendant to pay Kshs. 30,000,000/= on account of just compensation for acquisition of land parcel Eldoret Municipality Block 7/255.
  - g. Costs.



2. The Plaintiffs contend that they are the registered owners of land parcel no. Eldoret Municipality/ Block 7/255. It is their claim that sometimes in January, 2022, the defendant's employees and/or agents unlawfully encroached on the suit land by fencing and constructing a permanent structure, which action they contend amounted to a violation of their rights to the suit land.
3. They further contend that the defendant has failed to render vacant possession of the suit land despite several promises and has also failed to pay just compensation for the constructive compulsory acquisition of the suit land. They thus urged the court to allow their claim and grant the orders sought.
4. The Defendant filed a Memorandum of Appearance dated 2<sup>nd</sup> September, 2022 and a Statement of Defence dated 4<sup>th</sup> October, 2022 in response to the allegations made against it. The defendant denied the ownership allegations made by the plaintiffs over the suit parcel and maintained that they are lease holders. It was also their contention that the plaintiffs do not have the locus standi to institute the claim herein as they are not the registered owners and that no proof of proprietorship interests has been adduced.
5. The defendant further denied the allegations of encroachment and maintained that it bears the constitutional responsibility to protect the interest of the public in its area.
6. On the issue of compensation for compulsory acquisition, it was the defendant's contention that the plaintiffs are not entitled to any compensation since they are not the registered owners of the suit land and that they have no valid claim against the County Government of Uasin Gishu. He thus urged the court to dismiss the suit with costs.

#### **Plaintiff's Case**

7. On 25/4/2023 the matter proceeded for hearing of the Plaintiffs' case. The 1<sup>st</sup> Plaintiff testified as PW1, on her own behalf and on behalf of the 2<sup>nd</sup> plaintiff. She adopted her witness statement dated 2.8.2022 as her evidence in chief. She further stated they filed the suit as the administrators of her late husband's estate and as joint owners of parcel number No. Eldoret Municipality/ Block 7/255.
8. She testified that they produced a copy of Survey Report dated 12/7/2022, which shows that the defendant has encroached on their land and blocked their access thereto.
9. It was also her testimony that she conducted a valuation on the suit parcel and a valuation report dated 11/4/2022 was prepared to that effect which valued the suit land at Kshs. 30,000,000/= . She urged the court to allow their claim and grant the orders sought in the plaint.
10. She produced the documents on her list of documents dated 2/8/2022 as Plaintiff's Exhibits 1-10 in support of their case as follows; Acknowledgment dated 1/9/2006 as Plaintiff's exhibit 1, Certificate of Confirmation of Grant issued in ELD HC P/A No. 194/2005 as Plaintiff's exhibit. 2, 2 letters by the Director of Surveys dated 7/11/1994 as Plaintiff's exhibit 3, beacon certificate dated 17/10/1994 as Plaintiff's exhibit. 4, lease dated 20/11/2006 as Plaintiff's exhibit. 5, Certificate of Lease dated 20/11/2006 as Plaintiff's exhibit 6, Certificate of Official search dated 17/2/2022 as Plaintiff's exhibit 7, Demand Notice dated 7/3/2022 as Plaintiff's exhibit 8, Survey Report dated 12/7/2022 as Plaintiff's exhibit 9 and valuation report dated 11/4/2022 as Plaintiff's exhibit 10.
11. On cross-examination, she stated that her prayer for Kshs. 30,00,000/= as compensation is an alternative prayer and reiterated that if the defendant intends to acquire the land, they should compensate them for it.
12. The plaintiffs thereafter closed their case.



## Defendant's Case

13. The defence case proceeded for hearing on 25/9/2024. John Mukwana, a surveyor working with the Ministry of Lands testified as DW1, on behalf of the defendant. He produced a copy of the Survey Map (Registry Index Map) in respect to parcel No. Eldoret Municipality/ Block 7/255 as Defence Exhibit 1. He explained that from the map, parcel No. 255 borders Sosian River although it does not stretch to the river.
14. The witness was however stood down to allow him to visit the site of the suit parcel, prepare the survey report and produce the same. Despite the defence being given time to prepare and file a survey report and further prosecute their case; they neither filed a survey report nor attended court to prosecute their claim. The defence case was thereafter marked as closed.
15. Upon closure of the defence case, the parties were directed to file their final written submissions. The plaintiffs filed their submissions dated 19<sup>th</sup> November, 2024 together with authorities while the Defendant filed his submissions dated 28<sup>th</sup> November, 2024 together with authorities which I have read and considered.

## Plaintiffs' Submissions

16. Counsel for the plaintiffs mainly submitted on the issue of the registered proprietorship of the suit land and whether the plaintiffs were entitled to compensation as prayed.
17. Counsel relied on the provisions of section 26 of the *Land Registration Act*, 2021 and the decision in the case of Penmain Company Ltd vs Likoni Community Development & 6 Others (2021) eKLR and maintained that the certificate of title and the certificate of official search confirmed that they are the joint registered proprietors of the suit land, which evidence was not controverted by the defendant.
18. On whether the plaintiffs are entitled to the prayers sought; it was their submission that they have adduced sufficient evidence to warrant the grant of the orders sought. They averred that the defendant did not invoke the provisions of section 107 of the *Land Act*, 2012 and Article 40(3) (b) of *the constitution* which outlines the legal procedure for acquiring land for public purpose.
19. However, it was their contention that given the status on the ground, the alternative prayer for compensation would be more suitable in the circumstances. That the survey report and the valuation report confirmed that the development carried out by the defendant were within the suit land, that the public interest would best be served by compensating the plaintiffs in the sum of Kshs. 30,000,000/= as per the valuation report produced by the plaintiffs.
20. He maintained that the defendant's action violated the plaintiffs' right to property as provided under section 24 and 25 of the *Land Registration Act*, 2012 and Article 40 of *the constitution*. He relied on the following cases to support their claim; Katra Jama Issa vs AG & 3 Others (2018) eKLR, Tonini Holdings Ltd vs Kenya Urban Roads Authority & Anor (2023) KEELC(25 July, 2023) and Annacherry Ltd vs the Attorney General (2014)eKLR.

## Defendant's Submissions

21. Counsel for the defendant acknowledged that despite several adjournments, they did not file any survey report on behalf of the defendant within the stipulated timelines. He also admitted that the surveyor who testified on behalf of the defendant was not conclusive.



22. They conceded that in the event that the plaintiffs' claim is allowed, the court ought to consider the fact that the defendants had already constructed on the suit land and are in occupation. They thus urged the court to make a just determination towards a reasonable compensation in order to protect the adverse effects on the rights of the residents of Uasin Gishu who would suffer irreparable damage in the event of an eviction order.

### **Analysis and Determination**

23. I have carefully considered the pleadings filed, the oral evidence, the exhibits produced by the plaintiffs and the rival submissions. In that regard, it is this court's considered view that the issues arising for determination are: -
- a. Who are the registered proprietors of land parcel number Eldoret Municipality/ Block 7/255?
  - b. Whether the defendant acts amount to unlawful encroachment on the suit property
  - c. Whether compensation should be awarded to the plaintiff for compulsory acquisition of the suit property.
  - d. Who should bear the costs of the suit?

#### **(a) Who are the registered proprietors of land parcel number Eldoret Municipality/ Block 7/255?**

24. Section 24 (a) of the [Land Registration Act](#) provides that: -

“the registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto; ...

25. Further, section 26(1) of the [Land Registration Act](#) provides that:

“a certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer or transmission by the proprietor shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, and the title of that proprietor shall not be subject to challenge, except-

- a. on the ground of fraud or misrepresentation to which the person is proved to be a party; or
  - b. where the certificate of title has been acquired illegally, un-procedurally or through a corrupt scheme.
26. The plaintiffs presented their testimony in court, giving an account and/or brief history on how the land was acquired by the 1<sup>st</sup> plaintiff's deceased husband and how they became the registered owners thereof vide transmission. They produced Plaintiff's exhibit. 2 in support of the said assertions. They also adduced a copy of the lease, the certificate of lease and an official search as Plaintiff's exhibit. 5, 6 and 7 respectively as proof of their ownership of the suit land.
27. It is important to note that even though the defendant made an allegation that the plaintiffs are not the registered owners, it neither challenged the ownership document produced by the plaintiffs nor provided contrary proof/evidence to support their allegations.



28. Section 26 of the Act is clear to the effect that a certificate of title shall be held as conclusive evidence of proprietorship. It is therefore not in doubt that the plaintiffs are the registered holders of a leasehold interest and the certificate of lease was duly and procedurally issued to them and is an indefeasible proof of ownership. In view of the foregoing; it is my considered opinion that Plaintiff's exhibit. 6 is conclusive evidence of the plaintiffs' proprietorship.

**(b) Whether the defendant's acts amount to unlawful encroachment**

29. It is the plaintiffs' claim that sometimes in January, 2022, the defendant unlawfully encroached into their parcel of land, fenced the same and constructed permanent structures without any lawful excuse.

30. The defendant merely denied the plaintiffs' ownership claims but did not comment or give a justifiable basis for their entry into the suit land and use of the same. No survey report or title document was produced or witness called to testify on behalf of the defendant to provide a lawful and reasonable justification and/or sufficient basis for the defendant's entry into and use of the suit land despite the same having been registered in the name of the plaintiffs.

31. Despite undertaking that they would visit the site of the suit land, prepare and file a Survey Report, no such report was ever filed in court.

32. Further, the defendant did not adduce any evidence to show that the plaintiffs lease to the suit land had been cancelled and/or terminated. There was no proof of compulsory acquisition of the suit land or of conversion of the interest in the suit land. Further, the defendant did not demonstrate that the suit land had been set aside for government use or that the allocation and registration in the names of the plaintiffs was irregular or that they were involved in fraud.

33. A right to hold property is a constitutional right as well as a human right and no person cannot be deprived of his property except in accordance with the provisions of *the Constitution* or Statute. It is therefore the finding of this court that the defendant had no right, sufficient basis or lawful justification to enter into the suit land, fence and construct permanent structures without duly complying with the due procedure on the compulsory acquisition of private property.

34. Article 40 of *the constitution* is clear to this regard; it protects the rights of a person to own property and provides that: -

Article 40(3) of *the Constitution* provides that:

“The State shall not deprive a person of property of any description, or of any interest in, or right over, property of any description, unless the deprivation;

- a) results from an acquisition of land or an interest in land or a conversion of an interest in land, or title to land, in accordance with Chapter Five; or
- b) is for a public purpose or in the public interest and is carried out in accordance with this Constitution and any Act of Parliament that—
  - i) requires prompt payment in full, of just compensation to the person; and
  - ii) allows any person who has an interest in, or right over, that property a right of access to a court of law

35. In the premises, it is my finding that the defendant has unlawfully encroached into the plaintiffs' land parcel without any lawful or reasonable justification.



## **Whether compensation should be awarded to the plaintiffs for compulsory acquisition of the suit property**

36. Section 107, 110 and 111(1) of the [Land Act](#) governs the process of Compulsory Acquisition and mandates the National Land Commission to regulate the assessment of just compensation and prepare the award of such compensation upon acquisition. Sections 113 – 119 discusses the issue of just compensation in detail.
37. It is not in dispute that the defendant did not strictly comply with the procedure outlined under section 107 of the [Land Act](#) as read with Article 40(3) of [the constitution](#) on compulsory acquisition. No evidence was adduced by the defendant in support of its claim. The [Land Act](#) provides an elaborate process of compulsory acquisition that must be complied with. See the decision in the case of Patrick Musimba v National Land Commission & 4 others (2016) eKLR.
38. The question that therefore follows is whether having failed to comply with the outlined statutory provisions for compulsory acquisition, can this court proceed to address the issue of just compensation as argued by the parties and the amount payable to the plaintiffs as contemplated by the law.
39. My answer to the above question is in the negative. Compulsory acquisition is a statutory process and the [Land Act](#) outlines in detail each step that must be followed for a lawful and valid process of compulsory acquisition. This court cannot therefore be used to sanitise a flawed process by assessing and awarding a sum of money as compensation for an acquisition without following the outlined statutory procedure. There is no evidence before this court to show that the defendant intended to acquire the suit property compulsorily and this court therefore has no basis to issue an award for an alleged “acquisition”.
40. Thus, even though both parties are open to this court awarding an order for compensation for defendant’s encroachment and use of the plaintiffs’ land; it is my considered view that awarding compensation for “acquisition” without the defendant following the laid down procedure for compulsory acquisition is akin to usurping the role and mandate of the National Land Commission in the assessing compensation and sanitising an otherwise flawed and unlawful act.

### **Costs**

41. It is trite law that costs generally follow the event and, in this case, I find that the plaintiffs are entitled to costs of the suit.

### **Conclusion**

42. The upshot of the above is that the Plaintiffs have proved their case against the defendant on a balance of probabilities and I therefore enter judgment for the Plaintiffs on the following terms: -
  - a. A Declaration is hereby issued that the Plaintiffs are the lawful owners of land parcel Number Eldoret Municipality Block 7/255.
  - b. A declaration is further issued that the Defendant has unlawfully encroached on land parcel Number Eldoret Municipality Block 7/255.
  - c. Notwithstanding prayers (a) and (b) above the defendant is at liberty to initiate the process of compulsory acquisition of land parcel number Eldoret Municipality block 7/255 within six (6) months.



- d. Should the Defendant fail to carry out the process of compulsory acquisition, the Defendant shall render vacant possession of land parcel Number Eldoret Municipality Block 7/255 within a period of six (6) months from the date of this Judgment failing which the Plaintiffs shall be at liberty to apply for an eviction order.
- e. After the Defendant has been evicted, there shall be a permanent injunction restraining the defendant by its employees and/or agents from encroaching on land parcel Number Eldoret Municipality Block 7/255.
- f. The costs of the suit shall be borne by the defendant.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA THIS 22<sup>ND</sup> DAY OF JANUARY, 2025.**

**J. M. ONYANGO**

**JUDGE**

**In presence of; -**

Mr Esikuri for Mr Kipnyekwei for the Plaintiffs

No appearance for the Defendant

Court Assistant – Hinga

