



**Kibugu v Maina & 6 others (Environment & Land Case
939 of 2017) [2025] KEELC 4534 (KLR) (16 June 2025) (Judgment)**

Neutral citation: [2025] KEELC 4534 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND CASE 939 OF 2017
LC KOMINGOI, J
JUNE 16, 2025**

BETWEEN

JOSEPH NDERITU KIBUGU PLAINTIFF

AND

ERIC HARUN MAINA 1ST DEFENDANT

CECILIA WANGECHI MAINA 2ND DEFENDANT

CHRIPIA INVESTMENTS 3RD DEFENDANT

TIMOTHY GATHARA MWANGI 4TH DEFENDANT

KAJIADO COUNTY LAND SURVEYOR 5TH DEFENDANT

KAJIADO NORTH DISTRICT LAND REGISTRAR 6TH DEFENDANT

ATTORNEY GENERAL 7TH DEFENDANT

JUDGMENT

1. By the Plaint dated 13th November 2017, the Plaintiff avers that he is the registered owner of property Ngong/Ngong/36071 which borders parcels Ngong/Ngong/28018, Ngong/Ngong/28019, Ngong/Ngong/36070 and Ngong/Ngong/28020 owned by the 1st, 2nd, 3rd and 4th Defendants respectively. In 2015, he noticed that the public road that facilitates access to his property and which borders parcels Ngong/Ngong/28018, Ngong/Ngong/28019, Ngong/Ngong/36070 had been encroached upon and buildings/structures constructed thereon. The Plaintiff then filed a boundary dispute with the 6th Defendant. On 24th March 2015 and 21st April 2015 the 5th and 6th Defendants visited the 1st to the 4th Defendants' properties and conducted a hearing and survey to re-establish the boundaries. However, the 5th and 6th Defendants failed to render a determination and the 1st to the 4th Defendants continued to undertake construction on the disputed area to the Plaintiff's detriment. He thus sought for:



- a. An order of injunction directing and/or compelling the 5th and 6th Defendants to complete and render the final decision and/or determination of the boundary dispute and final survey report regarding to the hearing conducted in April 2015 relating to parcels Ngong/Ngong/28018, Ngong/Ngong/28019, Ngong/Ngong/36070 and Ngong/Ngong/28020 registered and owned by the Plaintiff, the 1st, 2nd, 3rd and 4th Defendants respectively.
 - b. An order of permanent injunction be issued prohibiting the 1st, 2nd, 3rd and 4th Defendants from entering, encroaching, constructing, erecting, building, trespassing onto or any other manner interfering with or further interfering with the Plaintiff's right to exclusive possession and use of parcel Ngong/Ngong/36071 and the public road of access to Ngong/Ngong/36071 owned by the Plaintiff.
 - c. An order of injunction be issued directing and/or compelling the 1st, 2nd, 3rd and 4th Defendants to remove all buildings, wall or other structures erected or being erected on parcel Ngong/Ngong/36071 owned by the Plaintiff, failure to which the Plaintiff be at liberty to remove such structures at the 1st, 2nd, 3rd and 4th Defendants' costs.
 - d. General damages for trespass.
 - e. Costs of the suit.
 - f. Any other relief that the Hon. Court may deem fit to grant.
2. The 1st and 2nd Defendants filed their statement of Defence dated 15th November 2022.
 3. The 3rd Defendant entered appearance on the 15th December 2017 through Ms. Kiarie Kariuki & Associates but it appears did not file a statement of defence.
 4. The 4th Defendant in his Statement of Defence dated 31st January 2024 contested the Plaintiff's claim stating that a survey report given to all parties in the suit showed that he had not encroached on the Plaintiff's land or public access road and any constructions undertaken were within his parcel's boundaries. And that the suit should thus be dismissed with costs.

Evidence of the Plaintiff

5. PW1, Anthony Mwangi Githua, the Land Registrar Kajiado North Land Registry- Ngong, produced the report dated 17th May 2024 as an exhibit in this case. It was marked P. Exhibit 1.
6. On cross examination he stated that although they were not able to establish beacons, there were structures on parcels No. Ngong/Ngong 28018, 28019 and 28020 and that these structures ought to be removed. He stated that parcels 36071 and 36070 were subdivisions of a larger parcel and that parcel 36070 was situated at the entrance from the road and part of the structures on parcel 36070 were at the entrance. He stated that it was determined that the road was 4 metres wide instead of 9 metres and the GPS showed that parcel 36070 had encroached on part of the access road. He also added that the access to parcel 36071 was very narrow and that parcels 28018, 28019 and 28020 had also encroached on the access road to parcel 36071. He indicated that the beacons ought to be re-established, structures demolished and the RIM amended. He pointed out that when he sought Court's indulgence to re-visit the site, the 1st and 2nd Defendants were present and he ascertained that they had encroached the access road and he informed them as such. He confirmed that parcels 28018 and 28019 had encroached the access road but parcel 28020 had not.
7. PW2 Evans Orina the Surveyor attached at Ngong Land Registry produced the survey report dated 17th May 2024 as marked as P. Exhibit 1.



8. During cross examination he stated that the access from the main road to parcels 36070 and 36071 was 4 metres instead of 9 metres. He stated that parcels 28018 and 28019 had structures spilling over to the access road and parcel 36070 also had a structure that had encroached on the access road. Parcel 28020 had not encroached. He further stated that parcels 28018 and 28019 had encroached on the access road to parcel 36070 and 36071. He stated that parcels 28018, 28019 and 28020 were acquired before parcels 36070 and 36071 and they put up structures prior to the ones on parcels 36070 and 36071.
9. PW3 Joseph Nderitu Kibugu, the Plaintiff adopted his witness statements dated 13th November 2017 and 5th December 2017 as his evidence in chief and produced his bundle of documents marked as P. Exhibit 2-14 respectively. He stated that the dispute was on the access road to his parcel 36071 which was narrow, restricted and almost impassable. He also stated that he was advised that the boundary between parcels 28018, 28019 and 28020 ought to be a straight line but that was not the position on the ground. He further stated that when he lodged the boundary dispute, the Registrar and the Surveyor visited the site but never provided a report. However, this had since been done and so the prayer to compel the Registrar to file the report had been overtaken by events although the other prayers in the Plaint were still valid.
10. On cross examination he stated that in the subdivision of parcel 28017 an access road ought to have been provided. He stated that parcel 28019 had a fence and a structure on it, parcel 28018 had a fence and trees which had encroached on the access road as well as parcel 36070.

Evidence of the Defendants

11. DW1 Eric Harun Maina adopted his witness statement dated 15th November 2022 and produced his bundle of documents dated 8th December 2022 as his evidence in chief. He stated that he was the owner of parcel Ngong/Ngong 28018 and contested that it had encroached on parcel Ngong/Ngong 36071. He indicated that when the subdivision that gave rise to parcels 36070 and 36071 took place, he was not present. He also confirmed that the Surveyor visited the site and filed a report. He contests the findings pointing out that it was the 3rd Defendant who had encroached on the access road.
12. On cross examination he confirmed that he was aware of the Surveyor's report dated 17th May 2024 and that he was present when the site was visited. He stated that according to the report, the boundary for parcels 28020, 28019 and 28018 should be a straight line but on the ground, the line was curved. He went on to state that when he purchased his parcel in 2003, a survey was undertaken and it did not show there was encroachment. He then went on and planted trees on his boundary and put up an iron sheet structure.
13. On re-examination he stated that it was the Plaintiff and the 3rd Defendant who ought to provide the 9 metres road access.
14. DW2 Cecilia Wangechi the 2nd Defendant stated that she was the owner of Ngong/Ngong 28019. When she purchased it, the land had already been surveyed and she was shown the beacons. Her neighbour at the time was parcel 28017. The access road in dispute was established after parcel 28017 was subdivided. And at that time there was no issue of having encroached on any property.
15. On cross examination she confirmed that she had put up a permanent fence along her parcel's boundary. On reference to the Surveyor's report she confirmed that the boundary line between her parcel 28019 and 36071 was not a straight line. She confirmed that a site visit was carried out by the Surveyor in 2019 although she pointed out that before parcel 28017 was subdivided, there was no boundary dispute between their parcels and that the 9 metre access road was to be created by parcel 28017.



16. On re-examination she affirmed that she was shown beacons of her property before she purchased
17. The 3rd Defendant was served but did participate in the hearing.
18. At the close of the oral testimonies parties tendered final written submissions.

Submissions of the Plaintiff

19. Counsel submitted on the following two issues for determination:
20. On whether the Defendants have trespassed on the suit property, it was submitted that the 1st to 4th defendants encroached upon and constructed structures on a road of access bordering the property since 2015. Despite attempts to resolve the boundary dispute through the 6th defendant (the Land Registrar). In the report filed on 22nd June 2019, and another report from the Land Registrar of Ngong dated 12th June 2024, confirmed the defendants' trespass. These reports, prepared with the participation of all parties and remain uncontroverted, established that structures belonging to the 1st, 2nd, 3rd, and 4th defendants encroached on the access road. Counsel argued that the defendants failed to provide any evidence to counter these findings, particularly the Land Registrar's reports, which used scientific methods to ascertain boundaries. The 1st and 2nd defendants' mere assertion that they did not "agree" with the survey report was deemed insufficient to rebut the official findings. The 3rd and 4th defendants did not present any evidence at all. Based on the *Trespass Act* and supported by *Nkya Vs. Awadh & Another* [2022] and *Otieno v Okwako* [2023], the plaintiff argues that the defendants' failure to provide supporting evidence for their claims of legal right to erect structures on the encroached area constitutes trespass.
21. On whether the Plaintiff is entitled to the reliefs sought, counsel submitted that under Section 24 of the *Land Registration Act*, the Plaintiff was the registered proprietor of the suit property and the defendants' trespass has caused significant financial loss and inconvenience. The plaintiff has been unable to transport construction materials, operate a borehole for water supply, or ensure access for emergency services due to the narrowed entrance caused by the encroachment. This infringed on the plaintiff's right to quiet possession. Therefore, the plaintiff had proven his case and was therefore entitled to orders sought with reference to *Willesden Investments Limited v Kenya Hotel Properties Limited* [2006], *Kenya Power & Lighting Company Limited v Fleetwood Enterprises Limited* [2017] to support the claim that trespass is actionable in itself and proof of damage is not strictly necessary for an award of damages for trespass.
22. As such, the remaining orders in the Plaintiff should be granted as prayed together with costs.

Submissions of the 1st, 2nd and 4th Defendants.

23. Counsel submitted that the Surveyor's report was clear that the 9metre access road should be created from the Plaintiff's and 4th Defendant's land, but the Plaintiff wanted to create an access road from the 1st and 2nd Defendants parcels. Therefore any creation of an access road from the 1st and 2nd Defendants' parcels would amount to illegal occupation which was contrary to right to property. Reference was made to *Margaret Njeri Wachira vs Eliud Waweru Njenga* [2018] KEELC 2703 (KLR) and *Mugambi vs Ayub* [2023] KEELC 572 (KLR).
24. Counsel therefore prayed for a dismissal of the Plaintiff with costs to the 1st, 2nd and 3rd Defendants.



Analysis and Determination

25. I have considered the pleadings, the evidence on record, the written submissions, and the authorities cited. I find that the issues for determination are:
- i. Whether the Plaintiff has proved his case;
 - ii. Whether the Plaintiff is entitled to the reliefs sought;
 - iii. Who should bear costs of the suit?
26. It is not clear whether this is a boundary dispute so to speak. The Plaintiff claims that the 1st to the 4th Defendants properties have encroached on his property and should be compelled to remove their structures. At the filing of this suit, one of the prayers was to compel the 5th and 6th Defendants to render a determination on the boundary dispute following a site visit conducted. This was done and the survey report dated 12th June 2024 filed. This prayer was thus vacated.
27. Being a boundary dispute, the mandate to determine such grievances is placed on the Land Registrar through Section 18(2) of the Land Registration Act provides that: “The court shall not entertain any action or other proceedings relating to a dispute as to the boundaries of registered land unless the boundaries have been determined in accordance with this section. This Court is therefore mandated to give credence to the 5th and 6th Defendants’ report dated 12th June 2024.
28. The report reads in part: “The acreage for land parcel Ngong/Ngong/28017 was more than 0.20ha i.e. 0.214ha. This is supported by the sum total acreage for the two subdivisions of 28017 land parcels (36070 and 36071) and the existing 4m road to 0.214ha. Also the ground distance along the road for land 28017 is 35m against 30m on the mutation. During the subdivision of land parcel Ngong/Ngong/28017 into (36070 and 36071) the surveyor did not create the new road of 9m to serve land 36071 as indicated in the mutation ... instead he used the excess acreage as the road...”
29. A reading of this report unequivocally reveals that the genesis of the current dispute regarding access to the Plaintiff’s parcel stems from the subdivision of Land Parcel No. 28017 into Parcels 36070 and 36071. The report shows that this subdivision failed to provide for the required 9 meter access road as per the mutation form intended to serve the Plaintiff’s parcel. Instead, the surveyor used the excess acreage of parcel 28017 as the road access, resulting to the current access challenges. The report recommends that the resultant parcels 36070 and 36071 should yield additional meters to accommodate a proper access road.
30. Following this report, it is clear that the 4th Defendant’s parcel 28020 has in no way encroached the Plaintiff’s property. The suit against him is hereby dismissed with costs to the Plaintiff.
31. It is the 1st and 2nd Defendants contention that the access road said to measure 42 metres by 9 metres does not exist in the actual map contained in the survey department or on the ground.
32. The Report by the Land Registrar Kajiado North, G.R. Gichuki dated 27th September 2019; read in part;

“Observations and Findings;

Parcels Ngong/Ngong/36070 and 36071 were given as a result of sub-division of Ngong/Ngong 28017. During the said sub-division a 9 metre access road was created to serve parcel Ngong/Ngong/36071. The width of the road is 4.1 metres but it increases to 5 metres towards the end.



The mutation indicated the width of the said road as 9 metres which is contrary to the measurements on the ground pursuant to advise by the surveyor whose report is attached herewith and whose advice I concur with the access road for parcel Ngong/Ngong/36071 is to be increased from the current 4 metres to 6 metres by moving the wall by 2 metres fronting the road towards parcel Ngong/Ngong/36071”.

33. The Survey Report dated 11th September 2019 is categorically states that the boundaries of Ngong/Ngong/28020/28018 and 28019 to remain as it is since there is no evidence of encroachment.
34. It should be noted that the parcel Numbers Ngong/Ngong/28018/28019 and 28020 existed before Ngong/Ngong 36070 & 36071.
35. The issue arose only after sub-division of Ngong/Ngong 28017 which gave rise to the plaintiff's parcel. Did he establish the beacons at the time of purchase? At what point did he realise there was an encroachment? Why did he not raise the issue with the previous owner of Ngong/Ngong 28017?
36. I am not convinced that the Plaintiff has move out his case against the 1st and 2nd Defendants on a balance of probabilities. In the circumstances he is not entitled to the reliefs sought.
37. The Plaintiff suit is therefore dismissed.
38. On the issue of costs, I order each party to bear own costs except the 4th Defendant who is entitled to costs from the Plaintiff.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 16TH DAY OF JUNE 2025.

L. KOMINGOI

JUDGE.

IN THE PRESENCE OF:

Mr. Nderitu for the Plaintiff.

Ms. Wambua for Mr. Opiyo for the 1st, 2nd, 4th Defendants.

N/A for the 3rd Defendant.

Mr. Mwambonu for the 5th – 7th Defendants.

Court Assistant – Mutisya.

