



**Adero & another v Kisumu County Director of Surveys & 3 others;
Miruka & another (Interested Parties) (Environment and Land Case
E004 of 2023) [2025] KEELC 6639 (KLR) (2 October 2025) (Judgment)**

Neutral citation: [2025] KEELC 6639 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISUMU
ENVIRONMENT AND LAND CASE E004 OF 2023**

**E ASATI, J
OCTOBER 2, 2025**

BETWEEN

RICHARD ONUNGA ADERO 1ST PLAINTIFF

SAMSON OKOTH ONUNGA 2ND PLAINTIFF

AND

KISUMU COUNTY DIRECTOR OF SURVEYS 1ST DEFENDANT

KISUMU COUNTY LAND REGISTRAR 2ND DEFENDANT

DAGO SUB-LOCATION ASSISTANT CHIEF 3RD DEFENDANT

HON ATTORNEY GENERAL 4TH DEFENDANT

AND

WELLINGTON ODHIAMBO MIRUKA INTERESTED PARTY

AMOS OTIENO MIRUKA INTERESTED PARTY

JUDGMENT

1. The 1st Plaintiff is the father of the 2nd Plaintiff. Vide Plaintiff dated 8th March, 2023, the plaintiffs herein claimed that the 1st Plaintiff was the registered owner of land parcel number Kisumu/Dago/120 (which upon resurvey became Kisumu/Dago/5370) and Kisumu/Dago/121 while the 2nd plaintiff was registered owner of Kisumu/Dago/122. Their complaint was that the Defendants planned to make an unlawful, discriminatory and unreasonable visit to the suit land to peg out the alignment of the road that purportedly trespassed through the parcels of land. They contended that the defendants' planned actions would compromise the Plaintiffs' right to property (more so destruction of the Plaintiffs'



buildings or structures or wall fence) and fair administrative action in relation to the said parcels of land. The Plaintiffs therefore sought for:

- a. An order of permanent injunction restraining the 1st Defendant and/or the 2nd Defendant and/or the 3rd Defendant by themselves or agents or their officers or any person acting under their authority from purporting to peg out the alignment of the section of the access road that serves the Plaintiffs' land parcel numbers Kisumu/Dago/121, Kisumu/Dago/122 and Kisumu/Dago/120 (now Kisumu/Dago/5370).
 - b. Damages for trespass to land.
 - c. Costs of the suit and interest thereon at court rates from the date of judgement until payment in full.
2. On behalf of the 3rd and 4th Defendants, a Memorandum of Appearance dated 14th March, 2023 and Statement of Defence dated 5th April, 2023 were filed by Senior Litigation Counsel for the Attorney General.
 3. The 3rd and 4th Defendants denied the Plaintiffs' claims and averred that they at all material times executed the mandate of their offices within the law.
 4. No defence was filed on behalf of the 1st and 2nd Defendants.
 5. Wellington Odhiambo Miruka and Amos Otieno Miruka were joined in the suit as the 1st and 2nd Interested Parties respectively vide the court order of 27th July, 2023.
 6. In response to the claim, the Interested Parties filed a Statement of Defence dated 15th January, 2024 vide which they denied the Plaintiffs' claim. They averred that they are the registered owners of land parcel Number Kisumu/Dago/115 which is now landlocked due to the closure of the access road by the Plaintiffs.
 7. They averred further that the said road of access had already been opened by the Land Registrar and that the only remaining thing was its implementation which was in progress.

The Plaintiffs filed a reply to the Defence by the Interested Parties.

The evidence

8. The 2nd Plaintiff testified as PW1. He adopted the contents of his witness statement dated 20th May, 2024 as his evidence in chief. He had stated in the witness statement that he is the registered proprietor of land parcel number Kisumu/Dago/122. That on 24th February, 2023 at 5.00p.m. the Defendants' agent delivered at his home a copy of the 1st Defendant's letter to the 3rd Defendant dated 6th December, 2022, indicating that the 1st Defendant's Surveyors would visit land parcel number Kisumu/Dago/118 and land parcel numbers Kisumu/Dago/120 (upon resurvey around June, 2022, it is now Kisumu/Dago/5370), Kisumu/Dago/121 and 120.
9. That the purpose of the visit was to peg out the alignment of the road that reportedly traversed through the parcels of land. That the planned site visit was unlawful, discriminatory and unreasonable and irregular and that the actions of the Defendants shall compromise their rights to property and fair administrative action in relation to their 3 parcels of land.
10. He stated that his problem with the Defendants is that a road was opened earlier and they were satisfied but that the Defendants keep on summoning him.



11. On cross-examination he stated inter alia that the Interested Parties were present when the road of access was opened. Although PW1 produced the documents listed on the Plaintiffs' list of documents dated 8th March, 2023 as exhibits P1 to P11, documents No.3 and 4 on the list were one and the same document but repeated. The documents produced are land certificate for land parcel No. Kisumu/Dago/120 dated 18th May, 1974, certificate of official search for land parcel known as Kisumu/Dago/121 and 122 both dated 1st December, 2022, Land Registrar's ground report dated 20th January, 2021, mutation forms for land parcel No. Kisumu/Dago/120, Extract of Registry Index Map (RIM) after resurvey of land parcel numbers Kisumu/Dago/119 and 120, Letter dated 8th July, 2022 and letter dated 6th June, 2022 by Kisumu County Director of Surveys to Dago Sub-location Assistant Chief.
The Defendants adduced no evidence.
12. The evidence adduced by the Interested Parties comprised of the testimony of Wellington Miruka, the 1st Interested Party. He testified through his witness statements dated 15th January, 2024 that together with the 2nd Interested Party, they are the joint owners of land registered of land parcel number 115 which is land locked after the access road was blocked by the Plaintiffs.
13. That after the road had been opened they instructed the District Surveyor to come on the said road officially to enable them access their parcel of land and a letter was done to the owners of all the neighbouring plots but that however the plaintiffs filed suit.
14. He stated further that the road opened by the Land Registrar is not functional. That although the Land Registrar ordered that the road be opened, the same had not been opened. The witness produced ground report, copy of title deed and certificate of official search as exhibits.
15. On cross-examination, the 1st Interested Party stated that although the land belonged to him and the 2nd Interest Party, they had sold it to one Fred Angienda who has already gotten title to the land. He stated further that he did not file a counterclaim seeking that the road be opened.

Submissions

16. Written submissions dated 19th March, 2025 were filed on behalf of the Plaintiffs by the firm of Row Advocates LLP.
17. Relying on the case of Bwire -vs- Wayo & Sailoki [2022]= KEHC 7 (KLR) , on the defendants' failure to adduce evidence, Counsel submitted that where a party fails to adduce evidence, its pleadings remain mere allegations which have not been proved.
18. Counsel submitted that the main issue for determination is whether the Plaintiffs proved their case to the required standard.
19. Counsel submitted that the Plaintiffs have established their proprietary interest in the 3 parcels. That the 2nd Defendant's ground report dated 20th January, 2021 following his site visit on 24th November, 2020 to parcel number Kisumu/Dago/120,121, 119, 3348, 3347, 114 and 115 confirmed that an access road serving the parcels of land had already been provided for. That therefore the 1st Defendant's plan to open the access road was unlawful and/or discriminatory and unreasonable and irregular.
20. That section 23(2) of the *Survey Act* Cap.299 of the Laws of Kenya requires Surveyors to give reasonable notice to land owners or occupiers before entering their land to carry out any survey work.
21. That Regulation 40(2) of the Land Administration (General) Regulation, 2017 requires the Land Registrar to give a notice to all persons appearing in the register that may be affected or such other persons as the Registrar may deem necessary for resolution of a boundary dispute. That in this case,



the 1st Defendant selectively sent his letter dated 6th December, 2022 which was copied only to the proprietor of parcel number 118 and the Plaintiffs (as proprietors of parcel number 121, 122 and 5370). That it omitted the proprietors of adjoining land parcel number 119 (now 5371 upon resurvey or parcel 120 in 2020). 3347, 3348, 114 and 115 yet those parcels of land were the subject of the 2nd defendant's said ground report dated 20th January, 2021.

22. That the letter dated 6th December, 2022 was not copied to the proprietor of land parcel No.115. That the Interested Parties were not genuine complainants.
23. Relying on the provisions of Regulation 40(6) of the Land Administration (General) Regulation 2017, Counsel submitted that if the Interested Parties were aggrieved with the report of the Land Registrar, they should have lodged an appeal to this court. That instead, they followed the backdoor by attempting to use the 1st Defendant to purport to open an already opened road.
24. That since the Interested Parties had sold their land parcel No. Kisumu/Dago/115 to Fred, they were busy bodies in the proceedings as they no longer had any proprietary interest in the land parcel No. Kisumu/Dago/115.
25. Counsel submitted further that the Interested Parties did not place before court any corroborative evidence such as photographs to show that the Plaintiffs had blocked the access road.
26. That the Interested Parties statement of defence did not contain any counterclaim seeking for re-opening of the access road. Relying on the case of Njeri Njoroge -vs- Joseph Maina Gichuki & Another [2018]KEELC 4274 (KLR), Counsel submitted that parties are bound by their pleadings and that the court cannot grant the prayer as it was not pleaded.
27. Counsel further submitted that the 1st Interested Party was not a credible witness and therefore the court should place little, if any, probative value on the 1st Interested Party's testimony.
Counsel urged the court to allow the Plaintiffs' claim.
28. On behalf of the 3rd and 4th Defendants written submissions dated 16th June 2025 were filed by the A-G. It was submitted that no cause of action was disclosed against the 2nd, 3rd and 4th Defendants. That it was the County Surveyor who was to align the road traversing land parcel number 115. That the Land Registrar had already opened the road of access and was not a party to the exercise sanctioned by the County Government. That the Plaintiffs have not proved trespass.
29. On behalf of the Interested Parties, written submissions dated 22nd May, 2025 were filed by the firm of Otieno & Achieng Company Advocates. Counsel submitted that the issue at hand involved different parcels of land and that it was not in dispute that the Plaintiffs were the registered owners of the parcels of land. That the main issue is the opening of an access road which had been created on the maps but is yet to be opened on the ground hence the need of the letter that was sent to the Plaintiffs.
30. That there is no evidence on record to show that there is any interference or threats to interfere with the Plaintiffs' proprietary rights, use, possession, enjoyment and to develop the suit land so as to warrant the grant of a permanent injunction.
31. That the Plaintiffs have not met the requirement for the grant of permanent injunction.
32. That the Plaintiffs have failed to prove their case on a balance of probabilities.

Issues for determination

33. From the pleadings, evidence and submissions, the issues that emerge for determination are;



1. whether or not the Defendants' letter dated 6th December, 2022 was unlawful, discriminatory and unreasonable and irregular.
2. whether or not the Plaintiffs are entitled to the relief sought
3. costs of the suit.

Analysis and determination

34. The first issue for determination is whether or not the Defendants' letter dated 6th December, 2022 was discriminatory, unlawful, unreasonable and irregular.
35. The Plaintiffs' complaint is centred around the letter dated 6th December, 2022 authored by one Steve-Rogers Kobado, County Director of Surveys, Kisumu County and addressed to the Assistant Chief, Dago sub-location, P.O. Box 2104, Kisumu. For its full tenor and effect, the contents of the letter are reproduced herein as follows;

“re: Opening Of Access Road Traversing Through Parcel Numbers Kisumu/dago/118, 121, 122 And 5370

I refer to the above referenced letter dated 21st October, 2021 concerning the matter mentioned above.

The surveyors from County Survey office will visit the site on Thursday, 9th March, 2023 to peg out the alignment of the road in question.

As the area Assistant Chief, your presence is required for security purposes.

You are therefore advised to summon the underlisted land owners whose parcels of land abut the access road.

signed

Steve Rogers Kobado

County Director of Surveys

Kisumu County

Cc: The Proprietors of Kisumu/Dago/118, 121, 122 & 5370.”

36. The Plaintiffs' position is that the alleged road of access was opened by the Land Registrar and Surveyor and therefore the letter indicating that the Surveyors intended to visit the land to peg out the alignment of the road was unlawful, discriminatory, unreasonable and irregular.
37. The Interested Parties position is that although the road was opened on the map, the same was not implemented on the ground hence the need for the Surveyors to visit the ground and do the actual opening of the access road on the ground.
38. Both the Plaintiffs and the Interested Parties relied on the Land Registrar's ground report dated 20th January, 2021 to support their respective contentions regarding the road of access. I have read the said report. It was signed by one George Nyangweso, District Land Registrar, Kisumu District. It shows that the dispute involved a total of eight (8) parcels of land namely; Kisumu/Dago/120, 121, 122, 119, 3348, 3347, 114 and 115 which were all indicated to be depicted on the Registry Index Map (RIM) sheet No.13 (thirteen) of Dago Registration Section.



39. The report indicated partly that the government and the private surveyors agreed that the RIM does not depict the actual ground situation. The verdict reached in the report was that;
- “ 1. The graveside should be in plot No.120.
 2. Access road allegedly passing through the graveside to be cancelled by amending the area map.
 3. The alternative access road that served parcel No.115 to 119 to be the access road that serves parcel No. 119 as it passes just next to it. I therefore opened this road on 24th November, 2020.
 4. The road has actually been provided for.
40. From the evidence adduced, the boundary of parcel 120 as described by Mr. Richard Adero should be retained and the Regional Surveyor should re-amend Registry Index Map (RIM) to depict the actual ground situation (see attached plan).”
41. It is clear from the report that the access road was not only identified and opened but the same was also actually provided for. The only recommendation made by the Land Registrar was for the regional surveyor to re-amend the Registry Index Map to depict the actual ground situation.
42. The Interested Parties conceded that the planned action by the Surveyors to visit the land was in response to their (Interested Parties’) complaint.
43. The 1st Interested Party stated that although the Land Registrar ordered that the road be opened, the same had not been opened.
44. This evidence does not agree with the Land Registrar’s report. The report stated clearly that the road was opened on 24th November, 2020 and that the road was actually provided for.
45. Further, as pointed out by the Plaintiffs, the letter dated 6th December, 2022 did not mention the Interested Parties or their parcel of land.
46. I find that the Plaintiffs’ grievance has merit. The letter dated 6th December, 2022 was unlawful for the reason stated by the Plaintiffs. In any event, the Interested Parties at whose instance the letter was written and on whose complaint or application the 1st Defendant planned to visit the site no longer had proprietary interest in any of the lands involved in the dispute as they had already sold their land to a third party who was not a party to the proceedings before the Land Registrar, was not mentioned in the letter dated 6th December, 2022 and is not a party herein. The Interested Parties have no locus standi.
47. I find that to the extent that the letter dated 6th December 2022 did not involve all the parcels affected by the dispute and to the extent that the said letter purported to invite parties for an intended exercise of opening a road that had already been opened, was unlawful and discriminatory.
48. The 2nd issue for determination is whether the Plaintiffs are entitled to the relief sought.
49. The relief sought in the plaint was for a permanent injunction and general damages for trespass as indicated at the onset of this judgement. It has been demonstrated that the Defendants at the instance of the Interested Parties were indeed planning to visit the site which comprised of the plaintiffs’ lands, the suit land herein to open an access road as per the letter dated 6th December 2022. This court has already found that the letter was unlawful as the said road had already been actually opened and provided for.



50. However, while the relief is sought against all the Defendants, there is no evidence adduced that the 2nd, 3rd and 4th Defendants had any role in it. The 3rd Defendant only received a letter addressed to him. There is no evidence that the 3rd Defendant took any action on the letter. The 2nd Defendant opened the road and prepared a report which the plaintiffs agreed with. No cause of action was disclosed against the 2nd, 3rd and 4th defendants.
51. For the foregoing reason, the court finds that the Plaintiffs are entitled to protection of their right to their respective lands as enshrined in article 40 of *the Constitution* of Kenya 2010 against the planned actions by the 1st Defendants and the Interested Parties. Their ownership of the suit lands was not disputed. An order of permanent injunction is merited.
52. Regarding the prayer for damages for trespass, trespass was not been proved as no evidence was adduced of unlawful entry of the Defendants onto the suit lands.
53. In conclusion, based on the foregoing determinations, the court finds that the Plaintiffs have proved their case on a balance of probabilities as against the 1st Defendant and hereby enters judgement in their favour and against the 1st Defendant for;
- d. An order of permanent injunction restraining the 1st Defendant by themselves or agents or their officers or any person acting under their authority from purporting to peg out the alignment of the section of the access road that serves the Plaintiffs' land parcel numbers Kisumu/Dago/121, Kisumu/Dago/122 and Kisumu/Dago/120 (now Kisumu/Dago/5370).
 - e. Costs of the suit and interest thereon at court rates.

Orders accordingly.

JUDGMENT DATED AND SIGNED AT KISUMU, READ VIRTUALLY THIS 2ND DAY OF OCTOBER 2025 THROUGH MICROSOFT TEAMS ONLINE APPLICATION.

E. ASATI

JUDGE.

In the presence of:

Maureen: Court Assistant.

Okello for the Plaintiffs.

No appearance for the 1st and 2nd Defendants.

Gaceri Mwenda for the 3rd and 4th Defendants.

Otieno for the Interested Parties.

