

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA
E.L.C CASE NUMBER 42 OF 2016

JOHNSON KAGORI NJAUNI.....
PLAINTIFF

VERSUS

COUNTY GOVERNMENT OF KIRINYAGA.....
DEFENDANT

JUDGMENT

1. The Plaintiff commenced the instant suit by way of a Plaint dated 4th April 2016. The Plaintiff's case was that on or about 13th March 2016, the Defendant, the County Government of Kirinyaga acting through one J. Nduka Wagura (MCA) entered onto his land parcel No. Kiine/Gacharo/334 (the suit land) without his consent and using a tractor commenced the construction of a road from the main Sagana/Karatina highway through a section of Plaintiff's said land. The Plaintiff contended the Defendant's acts constituted trespass onto his land and

appropriation of land without consent and/or any due compensation being paid to him. The Plaintiff prayed for Judgment for orders that:-

- (a) The act of the Defendant was illegal;**
- (b) The Defendant be ordered to compensate the Plaintiff at the current value for the loss incurred after cutting the trees and lost land.**
- (c) Injunction restraining the Defendant, its agents, servants or any other person authorized by the Defendant from entering, constructing or any other acting on land parcel No. Kiine/Gacharo/334 until the Plaintiff is compensated fully.**
- (d) Costs of the suit with interest.**
- (e) Any other relief the Court may deem just to grant.**

2. The Defendant filed a statement of defence dated 5th July 2016 where it denied the contents of the Plaint and specifically that its agents and/or servants trespassed on the Plaintiff's suit land. The Defendant further averred that the Ministry of Lands approved the access road after

all formalities were adhered to and thus asserted there was no reasonable cause of action against the Defendant. The claim for damages was denied.

3. The Plaintiff as part of his evidence filed an initial bundle of documents as per the list of documents dated 26th April, 2016 comprising 6 documents and filed a further bundle of documents as per the list dated 19th June 2023 comprising 5 documents. The Defendant neither filed any witness statements or any documents.
4. The Plaintiff and his valuer testified in support of the Plaintiff's case. The Defendant did not present any witness though its Advocate attended and cross examined the witnesses who testified on behalf of the Plaintiff.
5. The Plaintiff testified and he adopted his recorded witness statement as his evidence and tendered the bundles of documents referred to above as his exhibits in support of his case. Simply, his case was that the County Government entered onto his land and constructed a road

thereon which presently the members of the public use to access facilities. The Plaintiff stated that a portion of his land was appropriated by the Defendant to construct the road but the County Government never compensated him. He explained he had sued the Defendant seeking to be paid compensation for the land they took to construct the access road. The Plaintiff stated he had sought the services of a valuer to compute the valuation of the land appropriated by the Defendant.

6. In Cross examination the Plaintiff explained that the portion of land was appropriated by the Sagana/Kagio Town Council in 2011 when the Town Council constructed a road which the public started using. He stated he had written to the Town Clerk to be compensated with 2 plots vide a letter dated 5th December 2011 but he never got a response. He stated in 2016 the County Government brought a gladder to construct the road and that prompted him to come to Court. He clarified that KeNHA compensated him when they took another portion of land for the expansion of the Kenol-Karatina-Marua Road. He stated the portion KeNHA compensated him for measured

0.422 Hectares while as per the valuation report the portion taken by the Defendant was 0.15 Hectares. He stated the portion taken by the Defendant had since been tarmacked and in use by members of the public. He maintained the road was created by the County Council.

7. The Valuer, Munene Muriithi testified as PW2. He affirmed he was a registered Valuer and had been in practice for over 20 years. He confirmed he got instructions from the Plaintiff to carry out a Valuation and establish the current market Value of the portion of his land taken for the creation of access road by the County Government. The Valuer explained that, the Survey records did not provide for the road but there was a road on the ground. He stated he prepared a Valuation report which he produced as part of his evidence. He stated he prepared a ground survey plan which was at page 7 of his report. He identified the portion taken by the road as **'B'** which he indicated measured 0.05 Hectares while he identified another portion marked **'C'** on the plan measuring 0.10 Hectares which he stated was rendered unusable for any

economic purpose owing to the positioning of the access road. He stated he came up with a Valuation of Kshs 3,220,000/- as the market valuation for compensation purposes.

8. Under Cross examination he affirmed the Plaintiff's land was made up of the portions marked A, B & C as illustrated in the Survey plan. He stated his valuation did not include the portion that KeNHA had already compensated the Plaintiff. He stated he included portion '**C**' in the Valuation because in his opinion it was rendered un economical. He however admitted portion '**C**' could nonetheless be usable. He stated portion '**B**' taken alone would be approximately Kshs 930,000/- in terms of valuation. He confirmed the valuation he returned did not factor in any aspect of disturbance that is payable in regard to compulsory acquisition compensations.

9. The parties filed written submissions as directed by the Court. I have reviewed and considered the pleadings, the evidence adduced, the submissions by the parties and the

applicable law. The issues for determination are as follows:-

(1) Whether the actions by the Defendant of entering onto the Plaintiff's land and constructing a road on a portion thereon constituted compulsory acquisition?

(2) Whether the Plaintiff is entitled to be compensated for the portion of his land used to construct the road?

(3) What would be the quantum of compensation?

10. There was no dispute that the Plaintiff was the registered owner of land parcel number Kiine/Gacharo/334 and that a portion of the land was appropriated to construct and link up an access road with an existing one. It was not contested that there was no road of access that was provided in the survey records through land parcel Kiine/Gacharo/334 apart from the Kenol-Karatina-Marua Highway that cut through the middle of the parcel of land with a portion on either side of the road. The Defendant apparently needed to have the access road that

terminated at the stream forming the boundary of the Plaintiff's land on the Lower side opened up to abutt the Highway and afford the public easy access to the other side. The problem was the survey had not provided the access through the Plaintiff's land and the Defendant took it upon themselves to open the access road.

11. On the evidence adduced by the Plaintiff, it is abundantly evident that the Defendant was desirous of having the access road constructed on a portion of the Plaintiff's parcel of land to ease accessibility on the part of the public. Whereas it is the National Land Commission that under the provisions of the **Land Act, 2012 (Sections 107 to 133)**, that is mandated to undertake compulsory acquisition, what the County Government of Kirinyaga did in regard to the Plaintiff's land was analogous to and could be equated to compulsory acquisition only that they did not adhere to the process and procedure through which compulsory acquisition is effected. It does appear the County Government identified a need to have an access road opened up

through the Plaintiff's land to serve the public but instead of following due process to have the portion of land compulsorily acquired, they took it upon themselves to open the access road. The Plaintiff's portion of land was appropriated for public use and he was deprived of its use.

Article 40 of the Constitution guarantees protection of property rights and bars any arbitrary deprivation of any interest or right in any property. **Article 40(3) of the Constitution** provides as follows:-

40 (3) 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.**

12. In the instant case if the County Government required any portion of the Plaintiff's land for a public purpose, it ought to have invoked the provisions of **PART VIII - COMPULSORY ACQUISITION OF INTEREST IN LAND OF THE LAND ACT, 2012** whereby the National Land Commission would have certified the land for compulsory acquisition. **Section 107(1) of the Land Act, 2012** provides as follows:-

107. (1) Whenever the national or county government is satisfied that it may be necessary to acquire some particular land under section 110, the respective Cabinet Secretary or the County Executive Committee Member shall submit a request for acquisition of public land to the Commission to acquire the land on its behalf.

41 In the event the National Land Commission certified the land as required for public purpose under **Section 110 of the Act** and the acquisition was effected, just compensation ought to be paid promptly under **Section 111(1) of the Act**.

Sections 110(1) and 111(1) of the Act provide as follows:-

110. (1) Land may be acquired compulsorily under this Part if the Commission certifies, in writing, that the land is required for public purposes or in the public interest as related to and necessary for fulfilment of the stated public purpose.

111. (1) If land is acquired compulsorily under this Act, just compensation shall be paid promptly in full to all persons whose interests in the land have been determined.

14. The evidence of PW2, the Valuer demonstrated that a road of access had been constructed through the Plaintiff's parcel of land and that a portion measuring approximately 0.05 Ha had been taken up by the road. The valuer additionally explained a further portion of the Plaintiff's land measuring approximately 0.10 Ha had been isolated following the construction of the road which according to him could not be economically utilized. The Valuer placed the market valuation of the portion taken up by the road and what he deemed not economically usable at Kshs 3,220,000.00 (inclusive of 15% disturbance allowance). He stated the valuation of the portion taken up by the road alone would be approximately Kshs 930,000/- without factoring 15% disturbance allowance.
15. The Plaintiff as the registered proprietor of the suit land was entitled to enjoy his rights of ownership conferred under **Sections 24, 25 and 26 of the Land Registration Act, 2012**. The Defendant appropriated a portion of the Plaintiff's land for public purpose without following due process. The acts of the Defendant indeed constituted trespass onto private property. My brother C.

K. Nzili, J dealing with a somewhat similar case as the present one in the case of **Ngaita -vs- County Government of Meru (2024) KEELC 5732 (KLR)** where the Defendant had unilaterally sought to expand an access road from 6 metres to 9 metres thereby causing destruction of the Plaintiff's fence, trees and barbed wire the Judge observed:-

“Article 40, 61 & 62 of the Constitution are clear on the conversion of land from private to public Community land conversion of private land to public use must be done within the law as provided by Section 107 & 133 of the Land Act. Denial of the Plaintiff's right to ownership and enjoyment of his land must have been done as per Article 40 of the Constitution. Taking his land in this day and age, if not in line with the and the constitution, would amount to impunity”.

16. In the instant matter, I am persuaded and satisfied that the Plaintiff has proved that the Defendant unlawfully and

irregularly appropriated the Plaintiff's portion of land without following the laid down procedure. The Plaintiff is entitled to just compensation for the land utilized for the access road through the Plaintiff's land. The portion marked 'C' in the Valuer's report measuring 0.10 Ha has not been surrendered by the Plaintiff and it remains his property. I am unable to agree with the Valuer that this portion of 0.10 Ha was not economically usable. I take notice that many people within Kirinyaga County have land that is less than $\frac{1}{4}$ acre (0.10 Ha) and are able to utilize the land. It all depends on the planning and the use one puts the land into. In the premises therefore, the Plaintiff would be entitled to be compensated only for the portion that was taken up by the access road (0.05 Ha). I therefore would award the Plaintiff compensation of Kshs 930,000/- together with a disturbance allowance of 15% being Kshs 140,000/-. As the compensation ought to have been paid promptly and was not paid, I will award interest on the sum at Court rates from the date of filing the suit.

17. In the premises, I find and hold the Plaintiff has proved his case on a balance of probabilities and I enter Judgment in his favour in the following terms:-

(a) That the Defendant be and is hereby ordered to pay the Plaintiff compensation of Kshs 1,070,000/- for the portion of 0.05 Ha road of access created over land his parcel Kiine/Gacharo/334.

(b) That interest at Court rates be paid on (a) above from the date of filing suit till payment is made in full.

(c) Costs of the suit are awarded to the Plaintiff.

**JUDGMENT DATED, SIGNED AND DELIVERED VIRTUALLY
AT KERUGOYA THIS 13TH DAY OF NOVEMBER 2025.**

J. M. MUTUNGI

ELC- JUDGE