

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ELC CASE NO. 17 OF 2020

SOLOMON K. SONGOK **1ST**
PLAINTIFF
SHADRACK NGETICH **2ND**
PLAINTIFF
DANIEL LAGAT **3RD**
PLAINTIFF
FELIX KIPKINYOR **4TH**
PLAINTIFF
TRUPHENA J. RUTO **5TH**
PLAINTIFF
HALIMA KOSGEI **6TH**
PLAINTIFF

-VERSUS-

COUNTY GOVERNMENT OF UASIN GISHU
DEFENDANT

JUDGMENT:

1. The Plaintiffs herein instituted the present suit vide a Plaint dated 6th April, 2020, against the Defendant, seeking the following orders:-

a) An order for permanent injunction restraining the defendant either by themselves, their servants and/or agents from laying any claims disrupting operations, interfering, selling, subdividing, alienating, transferring, leasing, encumbering, intermeddling, constructing a road and/or in any other manner dealing with the plaintiffs' Land Parcel Number Uasin

Gishu/Tapsagoi Settlement Scheme/258 measuring 6.5Ha, Uasin Gishu/Tapsagoi Settlement Scheme/721 measuring 0.1Acres, Uasin Gishu/Tapsagoi Settlement Scheme/721 measuring 0.05Acres, Uasin Gishu/Tapsagoi Settlement Scheme/906 measuring 0.813Ha and Uasin Gishu/Tapsagoi Settlement Scheme/910 measuring 0.05Ha or thereabouts situate in Uasin Gishu County.

- b) A declaration that Land Parcel Number Uasin Gishu/Tapsagoi Settlement Scheme/258 measuring 6.5Ha, Uasin Gishu/Tapsagoi Settlement Scheme/721 measuring 0.1Acres, Uasin Gishu/Tapsagoi Settlement Scheme/721 measuring 0.05Acres, Uasin Gishu/Tapsagoi Settlement Scheme/906 measuring 0.813Ha and Uasin Gishu/Tapsagoi Settlement Scheme/910 measuring 0.05Ha or thereabouts situate in Uasin Gishu County within the Republic of Kenya belong to the plaintiffs having lawfully and legally acquired the same for value.**
- c) An order for general damages for trespass.**
- d) Costs and interest of the suit.**
- e) Any other relief that this honourable court may deem fit to and just to grant.**

Plaintiffs' Case;

2. The Plaintiffs' aver that they are the legal, bonafide, beneficial and/or equitable owners of all that pieces of land known and designated as Land Parcel Number Uasin Gishu/ Tapsagoi Settlement Scheme/258 measuring 6.5Ha, Uasin Gishu/ Tapsagoi Settlement Scheme/721 measuring 0.1 Acres, Uasin Gishu/ Tapsagoi Settlement Scheme/721 measuring 0.1 Acres, Uasin Gishu/ Tapsagoi Settlement Scheme/721 measuring 0.05 Acres, Uasin Gishu/ Tapsagoi Settlement Scheme/906 measuring 0.813Ha and Uasin Gishu/ Tapsagoi Settlement Scheme/910 measuring 0.05Ha situated within Uasin Gishu county, hereinafter referred to as the suit properties.
3. It is their claim that they purchased the suit properties for valuable consideration on diverse dates and upon the said purchase, they acquired vacant and physical possession of their respective parcels.
4. They aver that the suit properties were surveyed and that they have been in and have remained in possession thereof, carried out substantial developments and invested colossal sums of money in making improvements on the suit properties.
5. It is their contention that upon survey of the suit properties, it was never designated as a road reserve.

6. It is therefore their claim that in or about March, 2020, the defendant without any color of right or plaintiffs' consent, maliciously, illegally and unlawfully gained forceful entry into the suit properties; has dug trenches, destroyed existing beacons, started road construction and barred the plaintiffs from entering therein to their detriment.
7. It is further claim that they have never authorized the defendant to deal with the suit properties in whatever manner and particularly constructing the road on the suit properties.
8. They thus urged the court to allow the suit and grant the orders sought.

Defendant's Case:

9. The plaintiff's case was opposed. However, upon a perusal of the court record, I have not seen any statement of defence filed on behalf of the defendant herein.

Trial:

10. The Plaintiffs' case proceeded for hearing on 18.01.2023 when the 1st plaintiff testified as PW1 and called one witness to testify in support of their case.

11. PW1 adopted his witness statement dated 06.04.2020 as his evidence in chief. He stated that he lives at Tapsagoi Settlement Scheme in Turbo.

12. He further stated that he filed a bundle of documents dated 07.04.2020 which he produced as exhibits in support of their case as follows: -
 - i. Title deed for one of the plaintiffs – Pexhibit 1
 - ii. Sale agreement between Daniel Melly and Shadrack Ngetich – Pexhibit 2
 - iii. Sale agreement between Norah Chepleting and Daniel K. Lagat – Pexhibit 3
 - iv. Sale agreement between Paul Kipkurgat and Felix Kipkingor – Pexhibit 4
 - v. Title deed in the name of Titus Ruto Arap Kapkwot – Pexhibit 5
 - vi. Bundle of photographs – Pexhibit 6
 - vii. Letter dated 05.03.2020 – Pexhibit 7
 - viii. Survey Map – Pexhibit 8

13. It was also his testimony that he had been in possession and occupation of his land since 1972. However, on 05.03.2020, he went back home and found pegs along his fence which had been intact. That the beacons were equally intact.

14. It was his testimony that when he inquired, he was told that it is the County Surveyor who had put the beacons in place and the pegs inside his plot. He added that there were other parcels of land which had also been affected.
15. In conclusion, he urged the court to protect the suit properties from encroachment by the defendant.
16. On cross-examination, he conceded that the title deeds that had been produced as exhibits had not been accompanied by official searches.
17. When referred to the sale agreement, he also conceded that he was not present when the agreements were being prepared and further admitted that they do not bear the stamp of an advocate. He however explained that the agreements were done before the chief.
18. It was his testimony that he would abide by the analysis that will be contained and revealed in the survey report.
19. Robert Alusiola Kwendo Otieno testified as PW2. He stated that he is a surveyor, duly registered by the Institute of Surveyors of Kenya and gave his registration number.
20. He stated that he had been a surveyor since the year 2015 and that he had received instructions from the 1st plaintiff and the 5 other plaintiffs to conduct survey on their parcels of land.
21. It was his testimony that he carried out the survey and compiled a report which was handed over to the plaintiffs' advocate on record.

22. That he visited the ground/site on 03.03.2021 and had carried the survey plans and maps. He found that all the beacons save for one were missing. He also discovered that the county surveyor had used the motorable part of the road which was wrong.
23. It was his testimony that if the county surveyor wanted to take more land than what is existing on the maps, then they were to acquire the portions by way of compulsory acquisition.
24. He thereafter produced the survey report as Pexhibit 9.
25. On cross-examination, he reiterated that he has a current practicing certificate. He further testified that the road has a width of 15 meters whereas the county government demarcated 18 meters. He maintained that the road should be 15 meters.
26. On re-examination, he stated that he used the survey plan and Registry Index Map to come up with the survey. He confirmed that there was a wrongful alignment of the road when the county surveyor did the survey work.
27. After the re-examination, the plaintiffs thereafter closed their case.
28. The Defence case proceeded for hearing on 16.10.2025 when Samwel Yegon Koech, a Land Surveyor, working with the Ministry of Lands, Uasin Gishu county testified as DW1.
29. He stated that pursuant to the court summons, he visited land parcel No. Uasin Gishu/ Tapsagoi Settlement Scheme on

22.07.2020 and they subsequently prepared a report which was filed in court on 12.10.2020.

30. It was his testimony that during the exercise, he was accompanied by the Land Registrar, Uasin Gishu County and the other members as listed in the report.
31. He stated that their conclusion at the end of the exercise was that there exists a public road on the ground and on the map. Upon close of the survey exercise, a report was prepared, which he produced as Dexh. 1.
32. It was his testimony that they established that the public road exists officially on both the ground and on the relevant maps, that is, Tapsagoi Settlement Scheme Nos. 25/71, 795/3/5, 4201/3, 183/96 and 23/31.
33. That the record findings were that the public road does not encroach on the suit parcels of land. On the other hand, it was his testimony that the last finding was that there was encroachment on the public road by the suit lands as defined by the two relevant maps on the side of Tapsagoi Settlement Scheme.
34. He went on to state that there was an attached plan and from the plans, it was observed that parcel Nos. Tapsagoi Settlement Scheme/910, 906, 258 and 721 have encroached onto the public road by 0.021Ha, 0.031Ha, 0.15Ha and 0.05Ha respectively.

35. Further, he testified that they were able to establish the various sizes of encroachment. He produced the report dated 06.10.2020 as Dexhibit 2(a) and (b) respectively.
36. On cross-examination, it was his testimony that he personally carried out the survey on the suit properties but admitted that the survey exercise was not carried out on 22.07.2020 but that the same was done earlier.
37. He stated that he was the lead surveyor and was aided by other support staff, who were his juniors. He explained that in carrying out the exercise, the Registry Index Map and the Survey plans are gotten first, since they are the documents used to guide them while on the ground.
38. It was his testimony that on the ground, the road should be straight but due to the fences that have encroached onto the road, the road is not as it ought to be. That from the RIM, the road on the Settlement Scheme ought to be on a straight line.
39. He added that he also got to measure the width of the public road in question and the same measures 18 meters. He however conceded that he could not remember what the width of the public road was on the R.I.M unless he checks the original map.
40. He confirmed that among the members present during the exercise was one Linus Yego, who was representing the county government of Uasin Gishu. That the said Linus made his findings at minute 5, in which he stated that the public road should be 15 meters in width but that one was less.

41. He however reiterated that according to him, the public road ought to be 18 meters wide. He conceded that the methodology he used was not captured in the report that was produced in court. He admitted that he did not also attach the RIM and the Survey Plan.
42. He also conceded that he did not read the beacons marking the boundaries of the parcels of land. He explained that as a surveyor, there is Real Time Kinetic (RTK) used to identify existing beacons or total station. He stated that he used the total station in the present case. It was however his testimony that he did not see any pre-existing beacons.
43. He stated that Dexhibit 2(b) is the one with the beacons that he placed on the suit properties. That the suit properties (Settlement Schemes) are under the general boundary on one side and fixed boundary on the other side/opposite side.
44. It was his testimony that he based his measurements on the survey plan for Tapsagoi Settlement Scheme. That he did not use the center line of the road but used the fixed line boundary which is on the opposite line.
45. He stated that he could not be able to categorize the type of road in the present case since that was not within their mandate. When referred to Dexh. 2 (b), he admitted that the same does not indicate that the road in question ought to be 18 meters wide and neither does Dexh. 2(a), which only shows that there is a public road.
46. He went on to state that it is possible to know who encroached where and that is captured in the report. He

confirmed that he is the one who drew plan (Dexh. 2(b) and that he used the RIM and the Survey plan even though the said documents had not been produced in court.

47. On re-examination, it was his testimony that during the survey exercise, the plaintiffs' counsel was present. He also stated that he drew the plan from his expertise and knowledge.
48. After the re-examination, the defence closed their case.
49. Upon close of the defence case, this court issued directions on the filing of final written submissions within 21 days by each party. However, at the time of writing this judgment, only the plaintiffs had filed their submissions on 28.11.2025, which I have read and considered.
50. Be that as it may, I will proceed to render my decision as hereunder.

Analysis and Determination

51. I have critically considered and reviewed the Plaint herein, the respective testimonies and exhibits produced during trial as well as the plaintiffs' submissions and authorities in totality. Consequently, it is my considered view that the following issues arise for determination: -

- a. Whether or not the Defendant has trespassed into the plaintiffs' suit properties.*
- b. Whether the Plaintiffs are entitled to the reliefs sought in Plaint*

c. Who shall bear the costs of the suit.

Whether or not the Defendant has trespassed into the plaintiffs' suit properties;

52. The plaintiffs claim against the defendant is that, on or about 05.03.2020, the defendant without any color of right or consent, maliciously, illegally and unlawfully gained forceful entry into portions of their suit properties; dug trenches, destroyed existing boundaries and started road construction. As a result of the said forceful entry and/or encroachment, they barred the plaintiffs from entering into their suit properties.
53. It is their contention that they are the legal, bonafide, beneficial and/or equitable owners of the suit properties situate within Tapsagoi Settlement Scheme, having purchased the same for valuable consideration. Pursuant to the said purchase, they acquired vacant and physical possession and have remained in possession until March, 2020. It is their contention that they have carried out substantial developments and invested colossal sums of money.
54. It is also their claim that on survey of their suit properties within the Tapsagoi Settlement Scheme, it was never designated that there is a road reserve. They thus maintain that the acts of the defendant of interfering with portions of their suit properties and constructing a road amount to

trespass and/or encroachment. They called a surveyor as PW2 who testified in support of the said averments and who produced a survey report as Pexh. 9 in support of their claim.

55. The defendant on the other hand denied the said allegations of trespass levelled against it. They maintained that there exists a public road on the ground and same is also evident from the relevant RIM for Tapsagoi Settlement Scheme. It is also their contention that the said public road measures 18 meters in width.
56. On the contrary, it is their claim that the plaintiffs' suit properties, to wit, parcel Nos. 910, 906, 258 and 721 have encroached onto the public road, by diverse portions. DW1 adduced a report outlining the said encroachment on the part of the plaintiffs' suit properties as Dexh. 2(a) and (b) in support of their claims.
57. At the centre of the dispute herein is the construction of the public road. Both parties are accusing the other of trespassing and/or encroachment. The plaintiffs' claim that the defendant encroached into portions of their suit properties while the defendant also claims that the plaintiffs' fences on their suit properties have encroached onto portions of the public road reserve.
58. From the onset, it is important to note that even though it is the plaintiffs' claim that during survey of their suit properties, it was never designated that there is a road reserve, PW2, who testified in support of the plaintiffs' claim,

confirmed that there is a public road reserve but could not agree on the measurement of the same.

59. PW2 confirmed that the public road on the suit properties has a width of 15 meters whereas the defendant through the county surveyor demarcated 18 meters, which was more than what was existing on the maps. He thus contends that the additional 3 meters as a result of the wrongful alignment of the public road, ought to have been acquired by way of compulsory acquisition hence the instant suit.
60. It is therefore common ground that there exists a public road on the suit properties, Tapsagoi Settlement Scheme. What however appears to be in dispute is the measurement of this public road. Does the public road measure 15 meters in width as averred by the plaintiffs' witness PW2 or does the width measure 18 meters as stated by the defence witness DW1. Both parties produced survey reports in support of their rival claims.
61. To determine this, I have critically and carefully analyzed the various reports produced by the parties herein. The report prepared by the Independent Surveyor, R.A. Kwendo (PW2), dated 24.03.2021 and produced as Pexh. 9 reads in part as follows: -

"FINDINGS

- 1. There is a public road in the area in question.**
- 2. The road in question is Besiobor to Labuyet River and the disputed section is 2 Kilometers long.**
- 3. The road is 15 meters wide uniformly on the map.**

- 4. The road on the ground is between 7.5 meters wide and 14 meters a motorable width.**
- 5. The road alignment is as linear as possible as indicated on the survey plan as well as the Registry Index Map.**
- 6. The County government of Uasin Gishu has demarcated the road with road marker post as follows.....**

RECOMMENDATIONS

The county government of Uasin Gishu road marker post demarcation should be redone in a joint exercise with the plaintiffs' surveyors to properly demarcate the 15-meter road corridor.

Since one side of the road is fixed boundary and the other a general boundary. Then the fixed boundary side will enable the placement of fixed boundary beacons and the ultimate demarcation of the 15-meter road.

Should the county government of Uasin Gishu require more than the 15-meter width and stick to their current demarcation of 18 meters as on 6b above, then they should do compulsory land acquisition properly as stipulated by the Land Act, 2012."

62. The Land Registrar, Uasin Gishu prepared a report dated 12.10.2020 which was produced as Dexh. 1. The conclusion in the report reads in part as follows: -

"There is a public road that exists officially on the ground and on the map. The other two issues were answered by the surveyors in their report. Attached is the Surveyor's Report and copy of map for reference"

63. I have also carefully considered the report by the county surveyor dated 06.10.2020 and which was produced as Dexh. 2(a). The said report read in part as follows: -

“After carrying out measurements, the following was established:

- i. The public road exists officially on both the ground and the relevant maps, that is, Tapsagoi Settlement Scheme and the L.R. Numbers 25/71, 795/3/5, 4201/3, 183/96 and 23/31.***
- ii. The public road does not encroach on the suit lands.***
- iii. There is encroachment on the public road by the suit land as defined by the two relevant maps on the side of Tapsagoi Settlement Scheme. See attached plan.***

Further, from the attached plan, it was observed that parcel numbers Tapsagoi Settlement Scheme/910, 906, 258 and 721 have encroached on the public road by 0.021Ha, 0.031Ha, 0.15Ha and 0.05Ha respectively.”

64. A reading and analysis of the rival reports adduced by the parties herein unequivocally reveals that there is an access public road adjacent to the plaintiffs' suit properties. PW2 maintained that the said road is 15 meters and the same is

contained in his findings, Pexh. 9, wherein he explains the methodology used in determining the correct position of the said public road.

65. Conversely, the reports by the defence as contained in Dexh. 1 and Dexh. 2(a) save for confirming that there is indeed a public road in existence on ground and on the relevant maps and the parcel numbers within Tapsagoi Settlement Scheme that have encroached onto the public road, from a cursory look at the 2 reports, they do not categorically state the exact size and/or measurement of the width of the public road, whether the same is 18 meters as they allege or the same is 15 meters as the plaintiffs allege.
66. Be that as it may, the defence produced another crucial evidence, the Tapsagoi Settlement Scheme map, as Dexh. 2(b), which clearly shows the boundaries as they exist on the ground and the same is shown by the green color vis-à-vis the boundaries as per the relevant maps (F/R and R.I.M) as shown by the black color.
67. From a cursory look at Dexh. 2(b), the green color and the black color, there are some areas where the boundaries as they exist on the ground is less than the boundaries as per the relevant maps while there are also areas where the boundary as they exist on the ground is more than the boundaries as per the relevant maps.
68. Thus, in areas where the ground measurement is less, in essence means that the adjacent properties have encroached on the road reserve whereas on areas where the

ground measurement is more, ideally mean that the size of the road has exceeded the actual measurement.

69. Section 3 (1) of the Trespass Act, Cap 294 provides that:

"Any person who without reasonable excuse enters, is or remains upon or erects any structure on, or cultivates or tills or grazes stock or permits stock to be on, private land without the consent of the occupier thereof shall be guilty of an offence."

70. Thus, taking the foregoing in totality, it is the finding of this court that it cannot be certainly concluded that the defendant is guilty of trespassing and/or encroaching into the plaintiffs' suit properties, vide the construction of the public road. The plaintiffs have not discharged this burden to the required standard and to the satisfaction of the court.

Whether the Plaintiffs are entitled to the reliefs sought in Plaintiff;

71. The plaintiffs in their plaint sought orders of permanent injunction, a declaration that the suit properties belong to the plaintiffs, general damages for trespass as well as costs and interest of the suit.

72. Having held that the plaintiffs have not proved their claim on trespass against the defendant to the required standard, it is the finding of this court that they are not entitled to the reliefs sought in the plaint.

73. Be that as it may, owing to the nature of the dispute herein and the conflicting measurement and/or size of the public road, this court is of the considered view that in the interest of justice, there is need for the Land Registrar, the County Surveyor as well as an independent surveyor on the part of the plaintiffs, to visit the site for purposes of determining and establishing the actual position and measurement of the public road on the ground and which position and measurement should be accurate as provided in the relevant maps.

Who shall bear the costs of the suit;

74. A successful party should ordinarily be awarded costs of an action unless the court, for good reason, directs otherwise.

75. However, given the nature and circumstances of the dispute herein, it is my considered opinion that each party should bear their own costs for the suit.

CONCLUSION:

76. The upshot of the above is that the Plaintiffs have failed to prove their claim against the defendant. Consequently, this court finds as hereunder;

- i. The Plaint dated 6th April, 2020 is not merited and is hereby dismissed.**

- ii. **The Land Registrar, County Surveyor and an Independent Surveyor appointed by the plaintiffs herein, to visit the site (Tapsagoi Settlement Scheme) within 30 days from the date of this judgment.**
 - iii. **The purpose of the said site visit is to determine and establish the actual measurement and position of the public road on the ground as provided in the relevant maps.**
 - iv. **Each party to bear their own costs of the suit.**
77. It is so ordered.

DATED, SIGNED and DELIVERED virtually at **ELDORET** on **5TH** day of **FEBRUARY, 2026.**

HON. C.K. YANO
JUDGE

In virtual presence of; -
Osewe Otieno for the Plaintiffs
No appearance for the Defendant.
Court Assistant - Laban