



Chebugei & 3 others (Suing on their own behalf and on behalf of all members of the public using the Muserech - Orinie- Kapsatek Road) v Kenya Rural Roads Authority & 4 others (Environment and Land Petition E04 of 2022) [2026] KEELC 526 (KLR) (6 February 2026) (Judgment)

Neutral citation: [2026] KEELC 526 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT AND LAND PETITION E04 OF 2022
MAO ODENY, J
FEBRUARY 6, 2026
IN THE MATTER OF ARTICLES 19, 20, 21, 22, 23, 24, 40, 43, 47, 50, 60, 62, 64, 66
& 258 OF THE CONSTITUTION OF KENYA, 2010
AND
IN THE MATTER OF VIOLATION OF FUNDAMENTAL RIGHTS AND
FREEDOMS UNDER ARTICLES 40, 43, 60 AND 62 OF THE CONSTITUTION
OF KENYA
AND
IN THE MATTER OF SECTION 13 OF THE ENVIRONMENT AND LAND
COURT ACT NO. 19 OF 2011

BETWEEN

SUNGUYO OLE CHEBUGEI 1ST PETITIONER
CHIRCHIR KIPKOECH JOEL 2ND PETITIONER
VALENTINE JEPKOECH KOSGEI 3RD PETITIONER
ENOCK KIPYEKWAI CHEPSOM 4TH PETITIONER
SUING ON THEIR OWN BEHALF AND ON BEHALF OF ALL MEMBERS OF
THE PUBLIC USING THE MUSERECH - ORINIE- KAPSATEK ROAD

AND

KENYA RURAL ROADS AUTHORITY 1ST RESPONDENT
THE CHIEF LAND REGISTRAR 2ND RESPONDENT
THE DIRECTOR OF SURVEY 3RD RESPONDENT



JUDGMENT

1. By a Petition dated 20th May 2022, and amended on 2nd August 2022, the Petitioners herein filed a Petition against the Respondents seeking the following orders:
 - a. A declaration be and is hereby made that the Muserech, Orinie, Kapsatek road is a public road meant to be enjoyed by members of the public.
 - b. A declaration be and is hereby made that the 5th Respondent's action of blocking the Muserech, Orinie, Kapsatek road is illegal, arbitral and unconstitutional.
 - c. A mandatory injunction compelling the 5th Respondent and any other members of the public to remove all barricaded and blocked portions of the Muserech-Orinie-Kapsatek road.
 - d. A permanent injunction be and is hereby issued restraining the 5th Respondent and any other persons from barricading, obstructing, fencing or in any way denying the Petitioners and other members' of the public from accessing and using the Muserech-Orinie-Kapsatek road.
 - e. An order of mandamus be and is hereby issued directing the 6th 7th and 8th Respondents in collaboration with the 1st Respondent to manage and maintain the public road that is Muserech-Orinie-Kapsatek road by ensuring that the road is used freely by members of the public at all times as is intended.
 - f. A declaration be and is hereby made that a public road cannot be arbitrarily privatized without following laid down procedure.
 - g. The 2nd and 3rd Respondents' report establishing the boundaries and ownership of both sides of the Muserech, Orinie, Kapsatek road be adopted as part of the judgment herein.
 - h. Costs of this petition be borne by Respondents in any event.
 - i. Any other relief that this Honourable Court may deem just and fit to grant.

BRIEF BACKGROUND

2. The amended Petition dated 2nd August 2022, was supported by the affidavit of the 1st Petitioner dated 20th May 2022, together with the annexures.
3. The 1st Respondent filed its Replying Affidavit sworn by its Senior Assistant Roads Officer – Nakuru region (Rongai and Kuresoi Constituencies) Jadiel Macharia Gichohi dated the 26th September, 2022, together with annexures therein.
4. Similarly, the 2nd, 3rd and 4th Respondents through the 4th Respondent filed their Response to the Petition dated 27th June 2022, and later on filed the 3rd, Respondent's Report dated 2nd October 2023, together with annexures prepared by Mr. P.R.J Wanyama, the Rift Valley Regional Surveyor.
5. The 5th Respondent filed his Response to the Petition dated 12th July 2022, together with List and Bundle of Documents dated 1st July 2022. The 6th Respondent entered appearance through its County



Attorney but never filed its response while the 7th Respondent neither entered appearance nor filed a response. Further that the 6th and 7th Respondents never participated in these proceedings at all.

6. The 8th Respondent filed its Memorandum of Appearance dated 7th October 2022 and its Response in the form of an Internal Memo dated 6th October 2022, through its Principal Legal Officer - Mrs. Niuster Bitok Boor; Letter by its Nakuru County Coordinator Mr. Kision Ole Kibelekenye dated 19th October 2022, who also swore a Replying Affidavit dated 7th November 2022, by Frank Kibelekenye together with annexures attached therein.
7. The interested Parties through their Application dated 1st July 2022 supported the 5th Respondent's case for closure of the Road and 3rd Interested Party later filed an affidavit on 22nd May 2025, in opposition to the Petition.
8. On the 28th January 2025, parties agreed to adopt their respective Pleadings, Affidavits and annexures, Bundle of documents duly filed as at that time as their evidence in chief without calling the witnesses and only have the 3rd Respondent's Regional Surveyor testify in Court and be subjected to cross examination.
9. Mr. Peter Wanyama the Rift Valley Regional Surveyor testified on the 30th September 2025, where he produced the report dated 3rd October 2023, and was subjected to cross-examination wherein directions were given as to filing of submissions.

Petitioners' Case

10. It is the Petitioners' case that the 5th Respondent illegally blocked the Muserech -Orinie- Kapsetek Road (hereinafter referred to as the Road) on allegations that it is a private road despite the road being in existence since the 1960s.
11. The 1st Petitioner deponed that the use of the road became more pronounced around 1973 when the area was subdivided and residents began getting titles to their property and most land owners demarcated their parcels of land by either fencing and/or planting along the boundaries of their parcels of land.
12. The Petitioner further stated that the road has been maintained by the then Municipal Council of Nakuru and Baringo and later taken over by the 7th and 8th Respondents respectively as County Governments through public coffers, which the extract of the Hansard has confirmed marked as JL- 3 attached to the 5th Respondent's Affidavit in Support of his Application for Security for Costs dated 1st July 2022.
13. It was the petitioners' case that the 1st Respondent confirmed that it entered into a Memorandum of Understanding (hereinafter referred to as the "MOU") with the 6th Respondent dated 4th January 2019 to manage the road on its behalf as per the attached annexure marked as JMG-1 to the Replying Affidavit of Jediel Macharia Gichohi dated 4th July 2022.
14. He stated that it is pursuant to the said MOU, that the 1st Respondent had been maintaining the road on behalf of the 6th Respondent as shown in annexure marked as SOC- 6 attached to the Affidavit of the 1st Petitioner.
15. It was the Petitioner's disposition that members of the public had been freely using the said road from 1973 until sometimes in 2010, when the 5th Respondent and the 2nd Interested Party blocked portions of it passing adjacent to their parcels of land creating an uproar. He stated that the two were charged with the offence of forcible entry contrary to Section 90 of the Penal Code, which charges



were dismissed on the grounds that although the road had been used for a period of time, the road was not marked at the time, hence legally there was no road on the parcel of land belonging to the 5th Respondent and the 2nd Interested Party.

16. The Petitioner deponed that the Court concluded that the Republic could not complain over a road which the law did not know and proceeded to acquit them under Section 210 of the Criminal Procedure Code. As per the annexure marked as SOC- 4(a) and (b) being copies of the Letter dated 8th December 2021, and Ruling dated 9th November 2010 respectively as attached to the Affidavit of the 1st Petitioner herein.
17. The 5th Respondent and the 2nd Interested Party used the said Court Ruling dismissing criminal charges against them for blocking a portion of the road to lay claim on a portion of the road traversing adjacent to their parcels of land ever since, as per annexure marked as SOC- 5 being a Letter dated 19th January 2011, attached to the Affidavit of the 1st Petitioner herein.
18. According to the Petitioner, the said acquittal and the Hansard Report were issued on 9th November 2010, and 3rd September 2009, respectively both acknowledged that the Registry Index Map at the time had not demarcated the road as a public road. Subsequent demarcations by the 3rd Respondent herein in the year 2012, created the said road on the Registry Index Map whose extract is annexed to the 1st Petitioner's Affidavit and marked as SOC- 2.
19. Further, that the latest blocking of a portion of the road by the 5th Respondent as seen in annexure marked SOC-7 being a photo of the said barricade, fence and structure erected by the 5th Respondent, has forced members of the public to resort to use the Muserechi- Kapsebelin- Orinie Road, which road is very narrow with sections of it being too small for more than one vehicle to use and as such making it impossible for oncoming vehicles to pass each other. The said road is also not being maintained leading to motor vehicles, motorcycles, and bicycles getting stuck during the rainy season.
20. The Petitioner stated that these actions have caused another uproar from the members of the public leading to constant protests forcing leaders from the area, the Deputy County Commissioners of Rongai Sub-County – Nakuru County and Koibatek Sub-County – Baringo County to organize a meeting with the members of the public, law enforcement agencies in the area together with the affected Chiefs and Assistant Chiefs of the region, who agreed that a permanent solution be sought against the 5th Respondent and his cohorts which led to the filing of this Petition signed by about 334 affected members of the public on their own behalf and on behalf of other members of the public plying the Road.

1st Respondent's Case

21. The 1st Respondent filed its Replying Affidavit sworn by its Senior Assistant Roads Officer – Nakuru region (Rongai and Kuresoi Constituencies) Jadel Macharia Gichohi dated the 26th September, 2022, together with annexures therein, and deponed that Muserech –Orinie – Kapsatek – Lengenet Road is not a road under the purview of Kenya Rural Roads Authority the 1st Respondent.
22. Mr. Macharia stated that the 1st Respondent is a National government entity established under the [Kenya Roads Act](#) 2007 and as per the Legal Notice No. 2 of 2nd January 2016, roads falling under the national Government are class A, B and C only.
23. He further deponed that, while it is true that an MOU was entered into for the maintenance of U-F7174 –Junction C55 Molo River – Kapsatek Muricho Road/Muserech – Orinie – Kapsatek – Lengenet Road, the 1st Respondent's responsibilities did not extend to addressing issues of blockage



of the road by any party. The 1st Respondent fulfilled its obligation under the MOU by carrying out site clearance, culvert and drainage works and grading and gravelling, and that the disputed portion was not worked on due to the unsettled blockage issue.

24. Mr. Macharia also stated that the MOU did not transfer U-F7174 –Junction C55 Molo River – Kapsatek Muricho Road/Muserech – Orinie – Kapsatek – Lengenet Road, to the 1st Respondent. Hence, they have not violated any constitutional provisions as indicated in the Petition.

3rd Respondent's Case

25. Mr. Peter Wanyama, the Rift Valley Regional Surveyor stated that the road is the boundary between Nakuru and Baringo Counties and during mapping of the adjudication section, it was omitted in the RIM, even though it existed on the ground.
26. The Regional Surveyor also stated that in 2011 there was a stakeholders meeting where members of the public resolved that the Land Registrar should map the road for inclusion in the RIM. That pursuant to that, the Land Registrar authorized preparation of the mutation forms by the District Surveyor Koibatek who prepared a mutation that was to reflect the existing road on the RIM and it affected parcel Nos. Lembus/Kilombe/148, 149 and 150.
27. It was Mr. Wanyama's testimony that consequently, the RIM sheet 11 was amended to reflect the existing road, hence it became a public road and the 5th respondent has no claim and that the 3rd Respondent was just implementing what had been resolved.
28. On cross-examination by Mr. Bosire, he stated that the road was omitted in the RIM during mapping, although the road was in existence but the error was detected in a stakeholders meeting in 2011. He also stated that the Director of Surveys could not detect the error until a complaint was raised by the stakeholders, which was sufficient authority to be acted upon.
29. Upon cross-examination by Mr. Andama, Mr. Wanyama confirmed that the acreages of parcel Nos. 148, 149 and 150 were reduced by 0.35 hectares, 0.5 hectares and 1.1 hectares, respectively, and that the road ended at parcel No. 147 which was not affected, and has since been subdivided with new resultant parcel Nos. 515, 516, 517, 518 and 519. He stated that he is not aware whether the owners were compensated for the reduced acreages, and that RIM Sheet 11 has parcels 148, 149 and 150 Lembus Kilombe, which should be Kiplombe as Kilombe is an error.
30. Upon cross-examination by Ms. Bitok, he stated that practice is that stakeholders have a meeting, then the Director of Surveys who is represented by the Regional Surveyor, then amends or closes a road. The Land Registrar authorizes the rectification, and by 2011 the national land Commission had not been established.
31. Upon cross-examination by Mr. Oloo, counsel for the Petitioners, Mr. Wanyama, the Rift Valley Regional Surveyor confirmed that the road was already existing under parcel No. 147 prior to the amendment of the RIM. It was his evidence that they got instructions from the Land Registrar for rectification of RIM vide a letter dated 3rd March 2021 – District Registrar Koibatek – which enabled the preparation of the mutation forms, and that the owner of parcel No. 147 Sheet 12 did not have the authority to close the road.

Petitioners' submissions

32. Counsel for the Petitioners filed submissions dated 23rd October 2025, and identified the following issues for determination:



- a. Whether the Muserech -Orinie- Kapsetek Road is a public Road,
 - b. Whether the 5th Respondent's action in blocking the Road was unlawful;
 - c. Whether Petitioners rights were violated by the blockage of the Road;
 - d. Whether the Petitioners are entitled to the prayers sought; and
 - e. Who bears the Costs of the suit.
33. On the first issue whether Muserech -Orinie- Kapsetek Road is a public Road, counsel relied on Section 2 of the [Public Roads and Roads of Access Act](#) which defines a public road as:
- a. any road which the public had a right to use immediately before the commencement of the Act;
 - b. all proclaimed or reserved roads and thoroughfares being or existing on any land sold or leased or otherwise held under the Crown Lands Act, 1902 or the Government Lands Act (Cap 280) at any time before the commencement of the Act;
 - c. all roads and thoroughfares hereafter reserved for public use.
34. Counsel further relied on Article 62(1) (b) of [the Constitution](#) that classifies public land to include all roads and thoroughfares managed by public authorities, Section 28(c) of the [Land Registration Act](#), on overriding interest on rights of way and Section 49(1) (a) of the [Kenya Roads Act](#) which criminalizes obstruction or encroachment upon public roads.
35. Mr. Oloo stated that the history of the road is aptly captured by the 1st Respondent in his Supporting Affidavit dated 20th May 2022, and further amplified by the 8th Respondent vide the Replying Affidavit and various documents attached thereto. Counsel further reiterated the contents and the evidence of Peter Wanyama the 3rd Respondent's Regional Surveyor, who stated that the that the road is the boundary between Nakuru and Baringo Counties and during mapping of the adjudication section, it was omitted in the RIM, even though it existed on the ground.
36. Mr. Oloo submitted that the road, being the official boundary for the Nakuru and Baringo Counties at Rongai Sub-County in Nakuru County and Koibatek Sub-county in Baringo county and also maintained by the 1st Respondent vide an MOU with the 6th Respondent dated 4th January 2019; and it is the main road being used by over 19 School institutions, hospitals, churches and markets (Listed by the 1st Respondent in his Supporting Affidavit dated 20th May 2022 and photo extracts of the various signboards marked SOC- 3 attached)
37. Counsel stated that the 8th Respondent confirmed in its Replying Affidavit dated 7th November 2022, that it has not received any complaint, demand for compensation or vacant possession by any of the parties in this suit or any member of the public for the use of the road ever since it was established or even prior to its establishment and upon conducting ground investigations on the road, it established and concluded as follows:
- i. The road has been in existence since the colonial period and has been used uninterruptedly by the settlers and members of the public since independence until the 5th Respondent and some of the interested parties began blocking it intermittently around 2007 and in the process denying its access and use the members of the public benefit;
 - ii. During the periods where portions of the road is blocked, members of the public are forced to use alternative roads which are not only long but are poorly maintained; and



- iii. It supported the 3rd Respondent's assertion that it can rectify errors where existing roads were not reflected on the RIM.
38. Counsel relied on the case of *Homescope Properties Ltd & another v David Gachuki & Pamela Odera Sued as Chairman & Secretary of Karen Ngong View Estate & another* [2014] KEHC 7691 (KLR), and submitted that the road was already a public road prior to the process of rectification of RIM, therefore the 5th Respondent had no legal right to claim ownership of the portion of the road passing next to the then Parcel No. 147 in his late father's name.
 39. Mr. Oloo also stated that the 2nd and 3rd Respondents admitted their error and took steps to rectify it in the form of amending the mutation and the Sheet Map 11 which has since reflected the correct position of the road as being public road and as such even the Interested Parties or any other persons cannot legally lay a claim to any portion of the road.
 40. On the second issue as to whether the 5th Respondent's action in blocking the road was unlawful, counsel submitted that having established that the road was a public road, it was unlawful for the 5th Respondent to block the road. That the 5th Respondent has not denied blocking the road and therefore he has breached provisions of Section 49 (i) as read together with Section 49 (6) of the *Kenya Roads Act* which on conviction; he is liable to a term of imprisonment not exceeding one year or to a fine not exceeding one hundred thousand shillings, or to both.
 41. On the third issue as to whether the Petitioners' rights were violated by the blockage of the road, counsel submitted that the Respondents have violated Petitioners rights under *the Constitution* of Kenya, 2010 including and not limited to rights and fundamental freedoms, as the 1st, 2nd, 3rd, 4th, 6th, 7th and 8th Respondents are public institutions with the responsibility to protect the petitioners and other members of the public's rights under *the Constitution* including but not limited to the right to liberty, freedom of movement, use and access to public utilities including the road which is being managed by the 1st Respondent under an MOU with the 6th Respondent for the benefit of members of the public in 6th and 7th Respondents' counties.
 42. Counsel listed Articles 20, 21, 22, 23,24, 40, 43,47, 60, 62, and 66 of *the Constitution*, and submitted that the Petitioners are entitled to the orders sought in the amended petition with costs.

1st Respondent's Submissions

43. Counsel for the 1st Respondent filed submissions dated 14th November 2025, and identified two issues for determination as follows:
 - a. Whether the suit road Muserech –Orinie- Kapsatek- Lengenet road is public road.
 - b. Whether the suit road, Muserech –Orinie- Kapsatek- Lengenet road belongs to the 1st Respondent.
44. On the first issue, counsel submitted that the Muserech –Orinie- Kapsatek- Lengenet road is a public road as it has met the requirements of a public road. Counsel relied on the case of *Kenya Rural Roads Authority v Vipingo Ridge Limited & 2 others (Civil Appeal 18 of 2019)* [2022] KECA 1089 (KLR) (7 October 2022) where the court provided the two prerequisite factors that show establishment of a public road to justify classification of a public road, namely:
 - i. Gazette Notice showing conversion of a foot path or road of access to a public road.
 - ii. Cadastral survey to establish existing property lines and to establish, mark and document legal boundaries between the road and private lands.



45. Counsel submitted that the court relied on the provisions of section 8 of the Public Roads and Roads Access Act, Section 47 and 1st Schedule of the [Kenya Roads Act](#) and Section 24 of the [Survey Act](#). Consequently based on the evidence adduced by the Petitioners and more specifically the Registry Index Map demonstrating the position of the road and the gazette Notice adduced by the 1st Respondent at paragraph 6 of the Replying affidavit of Jadel Macharia stating that the road is classified as Class ‘F’ road.
46. According to counsel, the prayer seeking a declaration that the subject road is public is frivolous, as the subject road is already a public road.
47. On the second issue whether the suit road belongs to the 1st Respondent, counsel submitted that the suit road does not fall under its mandate from the evidence adduced and the documentation produced, Legal Notice No 2 of 22nd January 2016 and the MOU between the 1st and the 6th Respondents. The said road is classified as class ‘F’ hence it falls within the mandate of the County government, and that the MOU only charged the 1st respondent with maintenance of the suit road, which included, site clearance, culvert, drainage works, grading and gravelling of the road.
48. Counsel relied on the case of Republic v Director General Kenya Rural Roads Authority (KeRRA); Ex-parte: Paul Sane Nanapu; John Umaka Mutunkei (Interested Party) [2022] KEELC 685 (KLR), where an application for leave to institute Judicial Review proceedings against the respondent to compel it to construct a road which was not within its mandate was not granted as the Respondent had proved vide a legal notice that the road was not within its purview.
49. In conclusion, counsel stated that based on the above, the suit road is not under the mandate of the 1st respondent, therefore the 1st Respondent cannot be directed or compelled to ensure continues and uninterrupted use of the suit road.

Analysis And Determination

50. The issues for determination that arise in this Petition are:
 - a. Whether the Muserech -Orinie- Kapsetek Road is a public road,
 - b. Whether the suit road, Muserech –Orinie- Kapsatek- Lengenet road falls under the mandate of the 1st Respondent.
 - c. Whether the 5th Respondent’s action in blocking the Road was unlawful;
 - d. Whether Petitioners rights were violated by the blockage of the Road, and whether the Petitioners are entitled to the prayers sought; and
 - e. Who bears the Costs of the Petition?
51. The first issue as to whether the Muserech-Orinie- Kapsetek road is a public road, the Petitioners and the Respondents except the 5th Respondent agree that the suit road is public.
52. Under the [Public Roads and Roads of Access Act](#) Public road is defined under section 2 as follows:
 - a. any road which the public had a right to use immediately before the commencement of the Act;;
 - b. all proclaimed or reserved roads and thorough fares being or existing on any land sold or leased or otherwise held under the Crown Lands Act, 1902 or the Government Lands Act (Cap 280) at any time before the commencement of the Act;



- c. all roads and thorough fares hereafter reserved for public use.
53. Similarly, in the case of Kenya Rural Roads Authority v Vipingo Ridge Limited & 2 others (Civil Appeal 18 of 2019) [2022] KECA 1089 (KLR) (7 October 2022) (Supra) where the court provided the two prerequisite factors that show establishment of a public road to justify classification of a public road, namely:
- i. Gazette Notice showing conversion of a foot path or road of access to a public road.
 - ii. Cadastral survey to establish existing property lines and to establish, mark and document legal boundaries between the road and private lands.
54. The Petitioners' evidence, together with the Gazette Notice by the 1st respondent, the Regional Surveyor's report and testimony fortified the claim that the suit road was a public road. The 5th respondent did not adduce any evidence to rebut the assertion that the suit road was a public road. The Surveyor stated that the road was already in existence but had not been captured in the Registry Index map which was later rectified as it was an error and the same was brought to the attention of the Director of Surveys by the stakeholders. He further informed the court that all the processes/procedures were followed which enabled them to rectify the RIM.
55. Consequently, it follows that the suit road is a public road which the 1st respondent stated that is classified a Class 'F'. It is trite that land designated as a public road cannot be the subject of private ownership and it is illegal for an individual to lay claim or attempt to acquire it as the 5th Respondent in this case.
56. On the issue as to whether the suit road, Muserech –Orinie- Kapsatek- Lengenet road falls under the mandate of the 1st Respondent, the Respondent explained that the Legal Notice No 2 of 22nd January 2016 and the MOU between the 1st and the 6th Respondents, was clear on the classification of the road as class 'F' which falls within the mandate of the County government and that is why they entered into an MOU, for the maintenance of the suit road, which included, site clearance, culvert, drainage works, grading and gravelling of the road.
57. In the Supreme Court case of Base Titanium Ltd v County Government of Mombasa & another (Petition 22 of 2018) [2021] KESC 33 (KLR) (16 July 2021) (Judgment) the court observed as follows:
- (35) KURA is responsible for the management, development, rehabilitation and maintenance of all public roads in cities and municipalities except where the roads are categorized as national roads. After the January 2016 gazettelement, KURA's mandate was expanded to all counties in line with Article 6(3) of *the Constitution*.
 - (36) On their part, KERRA is in charge of constructing, upgrading, rehabilitating and maintaining rural roads, controlling reserves for rural roads and access to roadside developments and implementing road policies in relation to rural roads. Under the classification of roads, KERRA is in charge of categories D, E, F, G, K, L, P, R, S, T, U, W."
58. The suit road having been classified as Class 'F' does not fall within the mandate of the 1st Respondent.
59. On the issue as to whether the Petitioners' rights have been violated, the Petitioners had listed several rights that have been violated by the blockage of the public road which was in existence but the 5th Respondent blocked the access. The blockage of a public road infringes upon the public's right to



use public property which is illegal under the [Land Act](#) and the provisions of Section 49 (i) as read together with Section 49 (6) of the [Kenya Roads Act](#) which on conviction; a person is liable to a term of imprisonment not exceeding one year or to a fine not exceeding one hundred thousand shillings, or to both.

60. The Petitioners also explained the hardships they undergo and have forced members of the public to resort to using the Muserechi- Kapsebeltin- Orinie Road, which is very narrow, with sections of it being too small for more than one vehicle to use, and as such making it impossible for oncoming vehicles to pass each other. The said road is also not being maintained, leading to motor vehicles, motorcycles, and bicycles getting stuck during the rainy season. These hardships are avoidable as there is a public road, which has been illegally closed or blocked by the 5th Respondent, who has neither denied nor given a plausible reason why he blocked the suit road.
61. In the case of *Dellian Langata Ltd vs. Symon Thuo Muhia & others* (2018) eKLR, the court held that a public road is set apart for designated use by all members of the public without limitation or restriction. Restriction of the use of a public road is an infringement on the rights of the users.
62. On the issue whether the Petitioners are entitled to the orders sought, the Petitioners prayed for a declaration that the suit road is public, which the court has already found in the affirmative. The second prayer was for a declaration that the 5th Respondent's action of blocking the suit road is illegal, arbitrary, and unconstitutional, the court having found that the suit road was a public road, the 5th Respondent had no business or authority to block the road, which has been in existence. If he had any questions of complaint, then he would have followed the laid down procedures before taking the law unto his hands. The 8th respondent, the National Land Commission, also confirmed to the court that they have never received any complaint from the 5th Respondent in respect of the road or compensation.
63. Whereas under section 149 of the [Land Act](#), the court has powers to enforce public rights of way, the court must be satisfied that there exists such a public right of way to justify entry on any land. The Petitioners', 1st, 3rd and 8th Respondents' evidence confirmed that there exists a public road.
64. The Petitioners also sought a mandatory and permanent injunction compelling the 5th Respondent together with the members of the public to remove the barricades on the blocked portion of the road and restrain them from further barricading, obstructing, fencing or in any way denying the Petitioners or members of the public access or use of the suit road.
65. In the case of *Katangi Developers Ltd vs AG & another* (2019) eKLR the court granted a mandatory injunction compelling the respondents to remove any fence, blockade or objects interfering with access, ingress or egress to or from the petitioner's properties since special and or exceptional circumstances existed for the grant of a mandatory injunction.
66. Similarly, in the case of *Slipet Properties Ltd & another vs Chege Mwaura & another* (2017) eKLR, in this case a party had placed a container on a public lane hence blocking public access. The court proceeded to direct the removal of the container to unblock the road by way of a mandatory and prohibitory injunction.
67. Section 49 of the [Kenya Roads Act](#) prescribes the process to be followed for installing structures on public roads. It provides:
 - “(1) Except as provided in subsection (2), no person or body may do any of the following things without the responsible Authority's written permission or contrary to such permission-



- (a) erect, construct or lay, or establish any structure or other thing, on or over or below the surface of a road reserve or land in a building restricted area;
 - (b) make any structural alteration or addition to a structure or that other thing situated on or over, or below the surface of a road or road reserve or land in a building restriction area; or
 - (c) give permission for erecting, constructing, laying or establishing, any structure or that other thing on or over, or below the surface of, a road or road reserve or land in a building restriction area, or for any structural alteration or addition to any structure or other thing so situated.
- (2) An Authority may, in its discretion, give or refuse to give permission under this section.
- (3) When giving permission the Authority may prescribe-
- (a) the specifications with which the structure, other thing, alteration or addition for which permission is requested must comply;
 - (b) the manner and circumstances in which, the place where, the conditions on which the structure, other thing, alteration or addition may be erected, constructed, laid, established or made; and
 - (c) the obligations to be fulfilled by the owner in respect of the land on which the structure, other thing, alteration or addition is to be erected, constructed, laid, established or made.
- (4) Where a person, without the permission required by subsection (1) or contrary to any permission given thereunder, erects, constructs, lays or establishes a structure or other thing, or makes a structural alteration or addition to a structure or other thing, an Authority may by notice in writing direct that person to remove the unauthorised structure, other thing, alteration or addition within a reasonable period which shall be stated in the notice but which may not be shorter than thirty days calculated from the date of the notice.
- (5) If the person to whom a notice has been issued in terms of subsection (4) fails to remove the structure, other thing, alteration or addition mentioned in the notice, within the period stated therein, such item may be removed by the Authority itself which may recover the cost of the removal from that person.
- (6) A person who contravenes any of the provisions of subsection (1) commits an offence and is liable on conviction to a term of imprisonment not exceeding one year or to a fine not exceeding one hundred thousand shillings, or to both.

68. This being a public road, there is no evidence that the 5th respondent sought and obtained permission to erect any structures on a public road, hence whatever structures, fence or barricade were illegal.



69. On the prayer for an order of mandamus to be issued directing the 6th, 7th and 8th Respondents in collaboration with the 1st Respondent to manage and maintain the public road, Muserech-Orinie-Kapsatek road by ensuring that the road is used freely by members of the public at all times as is intended, the 1st Respondent proved that the road does not fall under its mandate and would not have the authority to maintain it. It is noted that the classification of roads designates classes of roads to either the national or county government and different established road institutions to manage and maintain the roads. That is why there was an MOU between the 1st and 6th Respondent for maintenance. The court cannot issue orders that will confuse the implementation. This prayer therefore fails.
70. The Rift Valley Regional Surveyor produced a report which confirmed the existence of the public road and the error that was corrected in the Registry Index map in sheet 11. The Director of Surveys had authenticated the contents of the report and there was no alternative report to rebut the same. The report is hereby adopted as part of the judgment. All the parties agreed to the production of the report by consent and it formed part of the record, which the court was to rely upon in this Petition.
71. I have considered the amended petition, the affidavits, the evidence and documents attached, together with the submission by counsel and find that the Petition has merit. The court makes the following specific orders:
- a. A declaration is hereby made that the Muserech, Orinie, Kapsatek road is a public road meant to be enjoyed by members of the public.
 - b. A declaration is hereby made that the 5th Respondent's action of blocking the Muserech, Orinie, Kapsatek road is illegal, arbitrary and unconstitutional.
 - c. A mandatory injunction is hereby issued compelling the 5th Respondent and any other members of the public to remove all barricaded and blocked portions of the Muserech-Orinie-Kapsatek road.
 - d. A permanent injunction is hereby issued restraining the 5th Respondent and any other persons from barricading, obstructing, fencing or in any way denying the Petitioners and other members of the public from accessing and using the Muserech-Orinie-Kapsatek road.
 - e. A declaration is hereby made that a public road cannot be arbitrarily privatized without following laid down procedure.
 - f. The 2nd and 3rd Respondents' report establishing the boundaries and ownership of both sides of the Muserech, Orinie, Kapsatek road is hereby adopted as part of the judgment herein.
 - g. Each party to bear their own costs this being a public interest petition.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 6TH DAY OF FEBRUARY 2026.

M. A. ODENY

JUDGE

