



REPUBLIC OF KENYA



**Osman v Ngomo Multi-Purpose Co-operative Society (Environment and Land Case E027 of 2024) [2026] KEELC 1313 (KLR) (5 March 2026) (Judgment)**

Neutral citation: [2026] KEELC 1313 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA  
ENVIRONMENT AND LAND CASE E027 OF 2024**

**YM ANGIMA, J  
MARCH 5, 2026**

**BETWEEN**

**HASSAN ALI OSMAN ..... PLAINTIFF**

**AND**

**NGOMO MULTI-PURPOSE CO-OPERATIVE SOCIETY ..... DEFENDANT**

**JUDGMENT**

**A. Plaintiff's claim**

1. By a plaint dated 05.04.2024 and amended on 26.05.2025 the plaintiff sued the defendant seeking the following reliefs;
  - a. A mandatory injunction compelling the Defendant, their servants and / or employees to demolish the offending constructions on the road reserve along Magongo Road fronting the Plaintiff's parcel of land known as Subdivision No.5720 (Orig. No. 182/3) of Section on 72 Mainland North.
  - b. A permanent injunction restraining the Defendant, their agents, servants and / or employees from constructing any type or manner of construction on the road reserve along Magongo Road fronting the Plaintiffs parcel of. land known as Subdivision No. 5720 (Orig. No. 182/3) of Section 72 Mainland North.
  - c. Compensation for financial losses in the sum of Kshs. 500,000 per month from the date hereof until date of filing of the suit until the removal of the offensive constructions.
  - d. General punitive and exemplary damages to be assessed by the court.
  - e. The costs of this suit.



2. The plaintiff pleaded that he was the owner of sub-division No. 5720(original No.182/3) of Section VI Mainland North on which he has a rental house whereas the defendant was the owner of Plot No.4932/VI/MN lying on the western side of the plaintiff's plot as well as Plot No.1096/VI/MN lying on the northern side.
3. It was pleaded that sometime between 2014 and 2015 the National Land Commission acquired the defendant's plot No. 1096 through compulsory acquisition for the purpose of expansion of a nearby road known as Magongo Road. It was contended that upon expansion of the said road the remainder of plot No.1096 remained and was designated as a road reserve.
4. The plaintiff further pleaded that acting on the mistaken belief that the remainder of plot No.1096 still belonged to it, the defendant had unlawfully erected temporary structures on the road reserve and constructed a perimeter fence blocking the plaintiff's direct access to Magongo Road.
5. It was contended that a result of the defendant's said action he had suffered financial loss as a result of his tenants vacating his rental house as well as loss of anticipated business income due to blockage of a direct access to Magongo Road.
6. In the alternative, the plaintiff pleaded that he had no viable access road to his plot save through the defendant's property. As such, he sought an easement over the defendant's plot to enable him access his own plot as a matter of necessity.

#### **B. Defendant's response**

7. The defendant filed a defence dated 24.05.2024 and amended on 12.06.2025 denying liability for the plaintiff's claim. The defendant admitted ownership of plot 1096 but contended that only a small portion of 0.004ha out of 2.69 acres was compulsorily acquired for road expansion. It was denied that the disputed portion of plot 1096 was a road reserve. It was denied that the perimeter wall complained of fell within a road reserve as alleged or at all.
8. The defendant contended that the plaintiff had not made out a case for the grant of an easement over plot 1096 out of necessity since the plaintiff had an alternative access road to his plot which access was available to other plot owners in the same vicinity. The plaintiff's claim for compensation and damages was thus denied and the plaintiff put to strict proof thereof.

#### **C. Trial of the action**

9. At the trial hereof the plaintiff called 2 witnesses in support of his case. He adopted his witness statement dated 05.04.2024 as his evidence in chief and produced the documents in his list of documents as exhibits. However, the surveyor's report was produced by his surveyor who testified as PW2.
10. On its part, the defendant similarly called 2 witnesses and closed its case. It called its chairman, Vili Mwathi who testified as PW1. He adopted the contents of his witness statement dated 04.03.2025 and his further statement dated 11.06.2025 as his evidence in chief. He produced the 18 documents in the defendant's list of documents as exhibits. The defendant also called one surveyor who testified as DW2.

#### **D. Directions on submissions**

11. Upon conclusion of the trial the parties were given timelines within which to file and exchange their written submissions. The record shows that the plaintiff filed submissions dated 19.01.2026 whereas the defendant's submissions were dated 22.01.2026.



## **E. Issues for determination**

12. There is no indication on record of parties having filed an agreed statement of issues for determination. As such, the court shall frame the issues as provided for under Order 15 Rule 2 of the Civil Procedure Rules. Under the said rule, the court may frame issues from any of the following;
  - a. The allegations made in the pleadings or in answers to interrogatories.
  - b. The allegations made on oath by or on behalf of the parties.
  - c. The contents of documents produced by the parties.
13. The court has perused the pleadings, evidence and documents in the matter. The court is of the view that the main issues for determination herein are as follows;
  - a. Whether the defendant has wrongfully blocked the plaintiff's access to Magongo Road.
  - b. Whether the plaintiff is entitled to an easement over the defendant's property.
  - c. Whether the plaintiff is entitled to the reliefs sought in the suit.
  - d. Who shall bear cost of the suit.

## **F. Analysis and determination**

### **Whether the defendant has wrongfully blocked the plaintiff's access to Magongo Road**

14. The court has considered the material and submissions on record. The plaintiff's case was that upon compulsory acquisition of the defendant's plot 1096 part of the land was used for expansion of Magongo road whereas the balance was designed as a road reserve. In paragraph 17 of the plaint the plaintiff pleaded as follows;

“The defendant clearly seems to act on the mistaken belief that the part of plot No. MN/VI/1096, which is now designated road reserve belongs to the defendant to deal with the same in any manner that the defendant wishes”
15. At the trial hereof, the plaintiff stated as follows during his evidence in chief;

“.....My plot adjoins the main highway. There is no other property owner in between. The entrance to the plot has been blocked by the defendant.....”
16. During cross-examination by the defendant's advocate, the plaintiff stated as follows;

“....The government acquired the entire plot 1096. There is no other property owner between my plot and the main road....”
17. However, the plaintiff's surveyor (PW2) testified at the trial that he did not obtain any drawings from the Kenya National Highways Authority on the portion of the defendant's plot which was acquired for road expansion. He, however, conceded that the portion acquired by the government for road



expansion was very small. During the surveyor's cross-examination by the defendant's advocate he stated thus;

“.....It is true that the plaintiff's plot does not front the highway because of the existence of plot 4932”

18. The material on record shows that the defendant's plot 1096 was sub-divided, inter alia, into plot Nos. 4932 and 4935 with a remainder designated as plot 1096/R. It is clear from the evidence and survey reports on record that the government did not acquire the entire plot 1096 for road expansion. The evidence of record shows that the government acquired about 0.004 ha out of the 2.69 acres comprised in plot 1096.
19. There is no evidence on record to show the existence of an official access road through the defendant's plot 1096 and in particular on the spot where the defendant had constructed a perimeter wall. The 2 surveyors were in agreement that there was no official access road at the point where plaintiff wants to use an access to his plot.
20. The court is not satisfied that the plaintiff has demonstrated the existence of the alleged access road or road reserve which the defendant is said to have blocked. On the contrary, the material on record shows that the plaintiff has an access road to his plot which at some point access through the defendant's property No. 4932 to join Magongo Road. This is the route which the defendant has allowed the plaintiff and other residents of the area to use to access Magongo Road.
21. The court takes the view that the plaintiff has no right in law to choose where an access road should be located on his neighbour's property. If the defendant has offered point A for access, the plaintiff cannot insist on point B simply on account of personal convenience. The plaintiff's real grievance appears to stem from the fact that the alternative access road is narrow, longer, and inconvenient. He simply wanted a shorter and direct access to Magongo Road without regard to the property rights of the owner of plot 1096.

#### **Whether the plaintiff is entitled to an easement over the defendant's property**

22. The plaintiff sought an alternative relief essentially based on the doctrine of necessity. He contended that he was entitled to an easement over the defendant's plot 1096 since he had no means of accessing his plot. It was his submission that even the route offered by the defendant was not in the official survey records.
23. Black's Law Dictionary, 10<sup>th</sup> Edition defines an easement as follows;

“An interest in land owned by another person, consisting in the right to use or control the land, or an area above or below it, for a specified purpose (such as to cross it for access to a public road”
24. The same dictionary defines an access easement as

“an easement allowing one or more persons to travel across another's land to get to a nearby location such as a road. The access easement is a common type of easement by necessity.”
25. The plaintiff contended that he had no viable means of accessing his plot other than the point at which the defendant has constructed a perimeter fence. He was not satisfied with the existing route which also passes through the defendant's plot No. 4932 which was once part of plot 1096. As indicated before, the plaintiff was dissatisfied with the existing route because it is narrow, lengthy and winding.



He wanted a short, direct, wide and convenient route to Magongo Road at his chosen point through the defendant's property.

26. The plaintiff was also dissatisfied with the existing access road because it was not marked on official survey records and he was apprehensive that the owner of plot 4932 may close it at will since it passes through private property. The evidence on record which was tendered by the two surveyors was that there was no official route either at the point where the plaintiff wants an access road opened for him. The evidence on record shows that the plaintiff's plot does not abut Magongo Road at all. One wonders why the plaintiff would be apprehensive that the owner of plot 4932 may in future block the access road when, in fact, that owner is also the owner of plot 1096 through which he wants an access road.
27. The court is far from satisfied that the plaintiff has made out a case for the grant of an access easement on account of the doctrine of necessity. The plaintiff is not without an access to his plot. The evidence on record shows that he is not the only plot owner whose property falls behind plot 1096 and that the other plot owners are using the same route which the plaintiff considers narrow and inconvenient to access Magongo Road. As a result, the court is of the view that plaintiff is not entitled to the easement sought.

#### **Whether the plaintiff has proved his claim against the defendant**

28. The court has found that the plaintiff has failed to prove the existence of an access road or road reserve at the disputed site. The court has found that the plaintiff has failed to demonstrate that the defendant has wrongfully blocked his access to Magongo Road. The court has further found that the plaintiff has failed to demonstrate that he is entitled to an easement over the defendant's plot 1096 on account of necessity. As a result, the court finds and holds that the plaintiff has failed to prove his claim against the defendant on a balance of probabilities.

#### **Whether the plaintiff is entitled to the reliefs sought in the plaint**

29. The court having found that the plaintiff has failed to prove his claim against the defendant it would follow that the plaintiff is not entitled to the reliefs sought in the plaint or any one of them.

#### **Who shall bear costs of the suit**

30. Although costs of an action or proceeding are at the discretion of the court, the general rule is that costs shall follow the event in accordance with the proviso to Section 27 of the *Civil Procedure Act* (Cap 21). A successful party should ordinarily be awarded costs of an action unless the court, for good reason, directs otherwise. See *Hussein Janmohamed & Sons –vs- Twentsche Overseas Trading Co. Ltd* [1967] EA 287. The court finds no good reason why the successful party should not be awarded costs of the suit. As a consequence, the defendant shall be awarded costs of the suit.

#### **G. Conclusion and disposal orders**

31. The upshot of the foregoing is that the court finds and holds that the plaintiff has failed to prove his claim against the defendant on a balance of probabilities as required by law. As a consequence, the plaintiff's suit is hereby dismissed in its entirety with costs to the defendant.

It is so decided

Orders accordingly.

**JUDGMENT DATED AND SIGNED AT MOMBASA AND DELIVERED VIRTUALLY VIA MICROSOFT TEAMS ON THIS 5<sup>TH</sup> DAY OF MARCH, 2026.**



.....

**Y. M. ANGIMA**

**JUDGE**

In the presence of:

Nechesa - Court assistant

Mr. Kabebe for the plaintiff

Mr. Mwakisha for defendant

