



Nyariki & another (Suing as the Administrators of Estate of Henry Nyariki Okara) v Sani & 4 others (Environment and Land Appeal E013 of 2024) [2025] KEELC 5611 (KLR) (29 July 2025) (Ruling)

Neutral citation: [2025] KEELC 5611 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYAMIRA
ENVIRONMENT AND LAND APPEAL E013 OF 2024**

**DO OHUNGO, J
JULY 29, 2025**

BETWEEN

**AGNES MORAA NYARIKI 1ST APPELLANT
FELISTAS NYARIKI 2ND APPELLANT
SUING AS THE ADMINISTRATORS OF ESTATE OF HENRY NYARIKI
OKARA**

AND

**BILLAH KEMUNTO SANI 1ST RESPONDENT
THE COUNTY LAND REGISTRAR, NYAMIRA COUNTY . 2ND RESPONDENT
THE AREA CHIEF, NYANSIONGO LOCATION 3RD RESPONDENT
THE DEPUTY COUNTY LAND REGISTRAR, NYAMIRA
COUNTY 4TH RESPONDENT
ELIJAH SANI 5TH RESPONDENT**

(Being an appeal from the judgment and decree of the Chief Magistrate's Court at Keroka (C. Ombija, Senior Resident Magistrate) delivered on 20th November 2024 in Keroka MCELC No. E001 of 2023)

RULING

1. By Notice of Motion dated 21st April 2025, the First and Fifth Respondents seek the following orders:
 1. This application be certified urgent and it be heard ex parte in the first instance.



2. A temporary Order be and is hereby issued that the Applicants do access their property through the access path-way on Gesima Settlement Scheme/93 which pathway was sanctioned through the visit of the locus in quo by both the trial court as well as the Hon. J Mugo pending the hearing and determination of this application.
 3. A temporary Order be and is hereby issued that the Applicants do access their property through the access path-way on Gesima Settlement Scheme/93 which pathway was sanctioned through the visit of the locus in quo by both the trial court as well as the Hon. J Mugo pending the hearing and determination of the appeal.
 4. A temporary Order be and is hereby issued stopping the Appellants/Respondents and or their agents herein from blocking, destroying, interfering and or obstructing the access pathway on Gesima Settlement Scheme/93 that leads to the Applicants' homestead's pending the inter partes hearing and determination of the instant Application.
 5. A temporary Order be and is hereby issued stopping the Appellants/Respondents and or their agents herein from blocking, destroying, interfering and or obstructing the access pathway on Gesima Settlement Scheme/93 that leads to the Applicants' homestead's pending the inter partes hearing and determination of the Appeal.
 6. The full costs of this Application be provided for.
2. The application is based on the grounds listed on its face and is supported by an affidavit sworn by the Fifth Respondent. He deposed that the subject of this appeal is a gazetted access road and that both the trial court and Mugo Kamau, J. visited the *locus in quo* on separate occasions and found that without the access road, the First and Fifth Respondents' property stood landlocked. That both courts established that the Appellants and the First and Fifth Respondents have over the years used an alternative access path leading to the First and Fifth Respondents' homestead and situated on the Appellants' Gesima Settlement Scheme/93.
 3. The Fifth Respondent further deposed that the two courts granted temporary reprieve to the First and Fifth Respondents so that they would continue to use the access path situated on Gesima Settlement Scheme/93 and that following granting of stay of execution pending determination of this appeal through consent recorded on 20th March 2025, the Appellants blocked the access path on both ends then moved to destroy the demarcated area that is the access road and planted maize thereon thereby disregarding orders made on 11th December 2024 and rendering the First and Fifth Respondents landlocked. That as a result, the First Respondent who is advanced in age and in constant need of medical care had been unable to access such care with risk of fatal consequences and irreparable harm.
 4. The Appellants opposed the application through a replying affidavit sworn by Agnes Moraa Nyariki, the First Appellant. She deposed that parcel Gesima Settlement Scheme/93 on which the First and Fifth Respondents claim that a pathway has been closed belongs to the Appellants and not the said First and Fifth Respondents. That the First and Fifth Respondents have their own parcel, Gesima Settlement Scheme/98, which adjoins a public road and that there exists a pathway from the First and Fifth Respondents' home through their tea plantation to a public road. She further deposed that there is no road which has been closed since no public road exists on Gesima Settlement Scheme/93 and that the present application had been filed to seek sympathy.
 5. Mr Ndiritu, learned counsel appearing for the Second to Fourth Respondents, informed the Court that his clients do not oppose the Notice of Motion.



6. The application was canvassed through written submissions. The First and Fifth Respondents filed submissions dated 18th June 2025 while the Appellants filed submissions dated 20th June 2025. The First and Fifth Respondents relied on the case of *Nguruman Limited v Jan Bonde Nielsen & 2 others* [2014] eKLR as well as an extract from *Halsbury's Laws of England 3rd Edition*, vol. 21 at paragraph 739 page 352 and argued that they had met the threshold for granting the orders sought.
7. On the other hand, the Appellants submitted that the claim that they have blocked a pathway on Gesima Settlement Scheme/93 requires evidence. They further contended that the claims that the alleged pathway exists and that its existence was ascertained during site visits are false. Relying on the cases of *Yusuf v Mohamed & another* [2022] KEELC 2937 (KLR), *Ainushamsi Construction & Transporters Company Limited v County Government of Vihiga* [2024] KEHC 3288 (KLR) and *Juliet Kwamboka Ongwae t/a Kabawa Kulture v Mocha Place Limited* [2018] KEELC 821 (KLR), they urged the court to dismiss the application with costs.
8. I have carefully considered the application, the affidavits and the submissions. The sole issue for determination is whether the orders sought should issue.
9. This is an appeal from the judgment and decree of the Chief Magistrate's Court at Keroka (C. Ombija, Senior Resident Magistrate) delivered on 20th November 2024 in Keroka MCELC No. E001 of 2023. The appeal is yet to be heard. Consequently, it is crucial that the court does not make any determination that prejudices the final outcome of the appeal.
10. It is also important to note that upon filing the appeal, the Appellants filed Notice of Motion dated 3rd December 2024, through which they sought stay of execution of the judgment and decree pending hearing and determination of this appeal. On 20th March 2025, parties recorded a consent pursuant to which execution of the judgment and decree was stayed pending hearing and determination of this appeal. The order remains in force.
11. The First and Fifth Respondents have contended that some orders were made on 11th December 2024 allowing access through a pathway on parcel number Gesima Settlement Scheme/93. I have perused the record herein in detail. I have not seen any such order.
12. The First and Fifth Respondents concede that parcel number Gesima Settlement Scheme/93 belongs to the Appellants. At order number 1 of the judgment that is the subject of the appeal, there is reference to a public road "between parcel Gesima Settlement Scheme/93 and Gesima Settlement Scheme/52 leading to Parcel no. 98 and the same should be opened ..." I have not seen any mention of a pathway through parcel number Gesima Settlement Scheme/93.
13. Instead, I note that at page 4 of the judgment, the learned Magistrate who conducted a site visit, stated as follows:

The court was further taken through the lower end parcel no. 98 which extends to the road shared with Nyansiongo Settlement Scheme and indeed it is true that the 1st and 5th defendants have access to that public road and therefore not landlocked despite the fact that the 1st defendant may experience hardship in using the same due to the terrain.
14. While the entire judgment will be fully tested upon hearing and determination of the appeal, suffice it to state that at this point, there is material on record suggesting that the First and Fifth Respondents have alternative access.
15. Parties should stay focused on the dispute that has been placed before this court through this appeal. If I were to grant the orders sought in the present application, I would be allowing parties to introduce



new aspects that were not determined by the Subordinate Court. I do not think that the contention that the First and Fifth Respondents are landlocked, a position that contradicts the judgment of the Subordinate Court, warrants granting the orders sought.

16. I find no merit in Notice of Motion dated 21st April 2025. I dismiss it with costs to the Appellants. Parties are encouraged to expeditiously comply with the directions given on 20th March 2025 as regards filing of record of appeal and submissions on the appeal, with a view to an early hearing and determination of the appeal. Had the parties complied with the directions and timelines, they would be having a judgment date by now.

DATED, SIGNED, AND DELIVERED AT NYAMIRA, THIS 29TH DAY OF JULY 2025.

D. O. OHUNGO

JUDGE

Delivered in the presence of:

Mr Ochwangi for the Appellants

Ms Mosomi for the First and Fifth Respondents

Mr Ndiritu for the Second to Fourth Respondents

Court Assistant: K Misiko

