



**Nasambi (Suing as Administrator of the Estate of William Kundu Ndombi) v Nasambi  
(Suing as Administrator of the Estate of William Kundu Ndombi) (Environment  
and Land Case E007 of 2023) [2025] KEELC 5495 (KLR) (23 July 2025) (Judgment)**

Neutral citation: [2025] KEELC 5495 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KITALE  
ENVIRONMENT AND LAND CASE E007 OF 2023**

**CK NZILI, J**

**JULY 23, 2025**

**BETWEEN**

**ELIZABETH NABULE NASAMBI (SUING AS ADMINISTRATOR OF THE  
ESTATE OF WILLIAM KUNDU NDOMBI) ..... PLAINTIFF**

**AND**

**THE COUNTY GOVERNMENT OF TRANS-NZOIA ..... DEFENDANT**

**JUDGMENT**

1. The plaintiff has sued the defendant for threatening to open or create an access road inside her land parcel No. 7XX3/4/1 that she has occupied, developed and used for over 30 years. The cause of the complaint is a letter by the County Surveyor dated 27/7/2023. She now prays for a declaration that there exists no access road within her land, any attempts to do so are unlawful, and for a permanent injunction.
2. The defendant, by a statement of defence dated 22/1/2024, denies the alleged claim. It states that there exists an access road measuring approximately 13.8 meters in width, as according to the survey done in 1939, depicted in FR No. 46/82, 165/62, and deed plan No. 15XX88. The defendant avers that the existence of the access road was confirmed by the County Surveyor; hence, the intention communicated to the residents was to open up Siyenga River, Sabwani and Baraka Farm Sirende Road for the use by the residents of the Bikeke Sub-location, served by the access road.
3. The plaintiff, in her reply to the defence dated 16/2/2024, avers that the existence of the two access roads was confirmed by a Land Surveyor who was the one purportedly creating the said unlawful, illegal access roads, at the instance of a powerful politician in the area. The plaintiff avers that there was no public participation or consent sought for the intended creation of access roads.



4. At the trial, Elizabeth Nabule Nasandi testified as PW1. She relied on a witness statement dated 3/4/2023 as her evidence-in-chief. PW1 told the court that her late husband bought 2 acres out of L.R No. 7XX3/4/1, currently known as Baraka Farm, on 6/9/1984, settled therein, caused a survey of his plot, and access roads were created. She said that the County Surveyor, by a letter dated 27/7/2023, threatened to erect an access road across her parcel of land, yet the maps under her possession do not show the existence of such an access road.
5. PW1 relied on a copy of confirmation of letters of administration, a copy of the sale agreement, application for land control board consent, the letter of consent, County Surveyor's letter dated 27/7/2023 and photographs marked as P. Exhibit Nos. 1 – 8, respectively.
6. Further, PW1 said that the map attached to the County Surveyor's letter was just a proposed subdivision of Baraka Farm. In cross-examination, PW1 told the court that she co-owns the land together with her children, but was the sole administrator of the estate. She said that she had yet to be issued with a title deed for the land.
7. The legal framework relating to creation of public roads and roads of access is the [Public Roads and Roads of Access Act](#). In this suit, the plaintiff's cause of action arose after the letter dated 27/7/2023 was written to her, with the intention to create an access road over her land. The defendant has pleaded that it was justified to re-beacon the access road of 13.9 meters width, based on FR No. 46/82, FR No. 165/62, and deed plan 15XX88. The distinction between a public road and a road of access was defined in *Dellain Langata Limited -vs- Symon Thui Muhia & Others* [2018] eKLR. A public road is set apart and designated as such for use by all members of public.
8. A road of access is for private usage and is characterized by a party having made an application to have an access road constructed to connect or link such party to utilities like a public road. Evidence of the existence of such an access road was not provided by the defendant. In *Kipkirui Arap Koske -vs- Philemon Kipsigei Tangus & another* [2015] eKLR, the court observed that without evidence, it was unable to hold that there existed a public road through the defendant's land and if one existed, it ought to have been reflected in the RIM.
9. What the plaintiff seeks is a declaration that such an access road does not exist and that the acts of the defendant to create one would be illegal. Section 140 of the [Land Act](#) deals with a grant of an access order. Evidence that the plaintiff has blocked an access road is equally missing. Evidence that there is a need to create an access road is equally missing. The easiest way for the defendant to justify its defence on public interest or the existence of an access road was to call the Land Surveyor and Land Registrar to come and produce the FR. No. 46/82, 165/62 and deed plan No. 15XX88, together with the RIM. Where a party fails to call evidence, pleadings thereof remain mere statements.
10. The plaintiff has demonstrated her interest and rights over the suit land. It was upon the defendant to demonstrate the existence of an overriding interest over the plaintiff's land, which consists of an existing access road.
11. In the absence of such evidence, I grant prayer **(b)** of the plaint dated **3/8/2023**. The defendant has failed to call the Land Registrar and the Land Surveyor to show out the existence of any designated access road over her land. Costs to the plaintiff.

**JUDGMENT DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT KITALE ON THIS 23<sup>RD</sup> DAY OF JULY 2025.**

**In the presence of:**

Court Assistant - Dennis



Miss Arunga for the plaintiff present

Busiega for the defendant absent

**HON. C.K. NZILI**

**JUDGE, ELC KITALE.**

