



**Otieno v County Government of Trans Nzoia (Environment and Land  
Case E008 of 2023) [2025] KEELC 5489 (KLR) (23 July 2025) (Judgment)**

Neutral citation: [2025] KEELC 5489 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KITALE  
ENVIRONMENT AND LAND CASE E008 OF 2023**

**CK NZILI, J**

**JULY 23, 2025**

**BETWEEN**

**JOSHUA ADUDA OTIENO ..... PLAINTIFF**

**AND**

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

**JUDGMENT**

1. The plaintiff approached the court through a plaint dated 3/8/2023. He sued the defendant for purporting to enter into his L.R No. 7393/1-4 measuring approximately 1 acre, commonly known as Baraka Farm, to create or open up an access road known as Siyenga River, Sabwani and Baraka Farm Sirende road. The plaintiff avers that the intended access road, if allowed to be created, would pass inside and hive off approximately 13 meters of the suit land, thereby causing his permanent residential house to be demolished.
2. The plaintiff prayed for:
  - (a) An order that no access road exists.
  - (b) Permanent injunction restraining the defendant, its servants or agents from trespassing or creating an access road.
3. The defendant opposed the suit through a statement of defence dated 22/1/2024. It is averred that, according to the official survey done in 1939, as shown in FR Nos. 46/82 and 165/62, the road width C15-15B is 43 feet, or 13 meters, while the width of the road is marked A-B on deed plan No. 152688, and the County Surveyor has confirmed the opening of the two access road, which have a branch beacon at 01 in Bikeke and stretches to beacon 3 in Sirende.



4. The defendant avers that the County Surveyor, through a letter dated 6/4/2023 that indeed, the two roads were clearly captured in the area maps, hence the opening of the access roads would be in the public interest of the residents of the Bikeke Sub-location where Baraka Farm is situated.
5. The defendant avers that public interest militates against the private interests of the plaintiff, otherwise his claim is premature, untenable, unsustainable, no dispute is ripe, the orders sought are mere academic and that the suit raises no known cause of action, the wrong party is sued and that the court has no jurisdiction to hear and determine the matter.
6. Through a reply to defence dated 16/2/2024, the plaintiff avers that the current survey maps at Arthi House, Nairobi, revised the survey of 1939, during the subdivision of L.R No. 7393/1/4 and that the purported access road was non-existent, hence rendering the letter purporting to create the access road as illegal. The plaintiff avers that the defendant's letter dated April 2023 and the survey report were based on a layman's recommendation to open up a road, which directive was haphazardly arrived at by the County Surveyor, with no public participation; otherwise, the report was fraudulent, a forgery and a sham.
7. The plaintiff avers that the purported access road was a creation by a powerful politician who wanted to use his influence to coerce the County Surveyor into opening such an access road, for his selfish gains.
8. At the trial, Joshua Aduda Otieno testified as PW1. He relied on a witness statement dated 3/8/2023 as his evidence-in-chief. PW1 told the court that he purchased 1 acre out of L.R No. 7393/1-4 from Ezekiel Wanyonyi on 28/6/1991, took vacant possession and developed the parcel of land. He said that upon purchase, the registered proprietor caused a survey to be carried out on the respective parcel of land and access roads were created.
9. PW1 told the court that on 27/7/2023, the defendant's County Surveyor wrote a letter, which was like a notice, to visit his land and hive off an access road inside his parcel of land measuring approximately 13 meters. PW1 told the court that if the exercise is allowed, his residential house will be demolished. PW1 said that from the survey maps under his possession, there is no indication of the existence of an access road; otherwise, the defendant's intended acts are malicious and unlawful.
10. PW1 relied on a copy of a sale agreement dated 18/6/1991, a letter dated 27/7/2023 from the County Surveyor, a bundle of photos, the County Commissioner's letter dated 15/6/2022 and the three area maps. PW1 said that there are existing access roads serving the area and as per the three maps produced before the court. PW1 said that since 1991, when he bought the land, there have been various access roads serving the area residents, including his neighbour, one Elizabeth Nasumbi. PW1 said that the existing access road has not been changed or altered since 1991.
11. Further, PW1 said that he was in court following the threats issued by the defendant through the County Land Surveyor's letter dated 27/7/2023, which, if effected, would completely wipe out his entire plot. PW1 said that he acquired 1.2 acres of the suit land where he has settled his young family.
12. In cross-examination, PW1 told the court that he bought the land in 1991, but had yet to obtain the title deed.
13. Despite service and notice to attend the defence hearing, their witness for the defendant, one Miss Truphosa Amere, did not attend court on 24/6/2025. The defendant's case was therefore ordered closed. Parties were directed to file written submissions by 30/6/2025.
14. The issues calling for my determination are:
  1. If the plaintiff has proved any proprietary rights that were threatened by the defendant.



2. If the defendant was justified in creating or erecting an access road over the plaintiff's private property.
  - (3) If the plaintiff deserves the reliefs sought.
15. Trespass refers to unjustified entry into and commission of acts inconsistent with the owner's permission as per Section 3(3) of the *Trespass Act*. To prove trespass, a party has to show that he was entitled to immediate exclusive possession of the land. See M'Kiriara M'Mukanya & another -vs- Gilbert Kabeere M'Mbijiwe [1984] KECA 21 (KLR). In the letter dated 27/7/2023, the County Surveyor of the defendant had threatened to visit the suit parcel of land to re-establish beacons and or open a Siyenga River, Sabwani and Baraka Farm Sirende road. The justification by the defendant is that the said access roads are to be erected in public interest, save that they have been in existence since 1939, as per survey maps FR No. 40/75 FR No. 46/82 and FR No. 165/62. Further, the defendant avers that the members of the public require an access road and had sought the same.
  16. Creation of public roads and access roads is governed by Section 9 of the Public Roads & Roads of Access Act. The two ways to do so include: a private owner of land writing an application to the Board of the District where the land is situated, as per the Fifth Schedule of the Act. Secondly, is where there is no public land under Section 9(2) of the Act. Under Section 14(d), the Physical Planning Act (repealed), upon subdivision of land, a party causing the said subdivision was required to mark the roads and lanes in between which signify surrender.
  17. The plaintiff has pleaded that the maps allegedly used by the defendant to purport to create the proposed access road have been replaced following the subdivision of the suit land by the initial owner. Authentic maps showing initials 'a-b' is what the defendant should have produced before the court to show that there is a designated government land inside the plaintiff's parcel of land. Equally, the defendant would have called its County Surveyor to come and justify that during the subdivision scheme of the initial land, the owner surrendered some portion, approximated to be 13 feet, for access road under the Physical Land Use and Planning Act, 2019. Where a party fails to testify, the pleading remains a mere statement.
  18. Evidence that the defendant sought advice of the District Road Board over the intended re-beaconing of the access road is missing. The input or report form from both the Land Registrar and the District Land Surveyor, who are the custodians of land records and survey maps, was not taken by the defendant to confirm the existence of the access road within the plaintiff's parcel of land. Evidence that the plaintiff had encroached on an access road was not presented before the court. Reports confirming that there is an encroachment of an access road through development by the plaintiff are missing.
  19. Similarly, evidence that there was a boundary fixing that established the size, dimension and or uprooting of the initial beacons by the plaintiff is missing. The power to do so is the mandate of a Land Surveyor and a Land Registrar as held in Azzuri Limited -vs- Pink Properties Ltd [2018] eKLR. A blockage of an access road had to be established by the District Land Surveyor. If the defendant had any complaint over such a blockade, the easiest thing was to invoke the legal framework in the Public Road and Roads of Access Act. There is no evidence that an entry of an access road inside the plaintiff's land was made by the Land Registrar under Section 11 of the *Public Roads and Roads of Access Act*.
  20. The upshot is that the plaintiff has, on a balance of probabilities, established a right or interest in the suit land that was threatened by the defendant through its letter dated 27/7/2023, to erect an access road on his land without following due process. In Dellian Langata Ltd -vs- Symon Thuo Muhia & 4 Others [2018] eKLR, the Court of Appeal distinguished a public road and a road of access.



The plaintiff has not called the Land Surveyor and the Land Registrar to authenticate the RIM and reports for this court to declare that there is no access road across the suit parcel of land.

21. The makers of the maps relied upon by the plaintiff were not called to sustain the plaintiff's relief for declaratory orders.
22. The upshot is that I grant prayer (b) only, with a rider that otherwise than in compliance with the law. Costs to the plaintiff.
23. Orders accordingly.

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

**HON. C.K. NZILI**

**JUDGE, ELC KITALE.**

In the presence of:

Court Assistant - Dennis

Arunga for the plaintiff present

Musimbi for the defendant present

