



**Kipsoi v CEC Member of Lands, Physical Planning & Urban Development, Uasin Gishu & another
(Environment & Land Case E95 of 2020) [2024] KEELC 362 (KLR) (25 January 2024) (Ruling)**

Neutral citation: [2024] KEELC 362 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ENVIRONMENT & LAND CASE E95 OF 2020
JM ONYANGO, J
JANUARY 25, 2024**

BETWEEN

DANIEL KIMASE KIPSOI PLAINTIFF

AND

**CEC MEMBER OF LANDS, PHYSICAL PLANNING & URBAN
DEVELOPMENT, UASIN GISHU 1ST DEFENDANT**

**CEC MEMBER OF ROADS, TRANSPORT & PUBLIC WORKS, UASIN
GISHU 2ND DEFENDANT**

RULING

1. The plaintiff is the registered proprietor of land parcel number Langas Block1/198 measuring approximately 5 acres having purchased the same on September 20, 1975. The plaintiff avers that after purchasing the said parcel of land he fenced the land and carried out various developments including the construction of a secondary school known as St. Marks, business premises, residential houses and a dairy farm. He also hosts a Safaricom mast on his land and has a contract with Safaricom to that effect.
2. It is the plaintiff's claim that sometime in 1989, him and his neighbours were requested to surrender a portion of their land measuring 1.5metres each for the construction of a 3 meter road. In the same year, they surrendered 10 meters each for the creation of a road leading to Yamumbi Trading Centre. The plaintiff has therefore surrendered a total of 0.8m for the creation of the road leaving him with 4.2cres which he has fenced.
3. At a later date the defendants informed the plaintiff and other land owners that they would like to expand the 3.0 meter road to a 9.0 meter road and that each land owner was required to surrender more land. The plaintiff wrote to the defendants through his advocates to find out how much more land he was required to surrender but instead of responding to his inquiry, he was served with a notice that the defendants would deal with the land owners who had encroached on the road reserve.



4. The plaintiff avers that the defendant's intended action is discriminatory and it amounts to compulsory acquisition without following due legal process and is thus in violation of the plaintiff's right to own property. It is against this background that the plaintiff instituted this suit seeking the following reliefs:
 - a. A permanent injunction restraining the defendants, their servants and/or employees or anybody acting on their authority and/or instructions from trespassing, encroaching and/or expanding the road towards Langas Block 1/198 measuring 4.5 acres and encroaching or doing anything against the interest of the plaintiff and/or his assigns and/or agents or relatives occupying the suit land and/or trespassing and/or creating a road of access and/or doing anything the said parcel known as Langas Block 1/198 measuring 4.5 acres or thereabouts.
 - b. Costs incidental to this suit.
5. The Defendants filed a Defence dated November 20, 2020 denying the plaintiff's claim and stated that the plaintiff has encroached on a road reserve.
6. In order to determine whether the plaintiff has encroached on a road reserve, the court by an order issued on January 27, 2021 directed that the County surveyor visit the suit property in the presence of the parties, conduct a survey and file his report in court. The County Surveyor visited the suit property and filed his report in court dated April 14, 2023.
7. In the meantime, the Plaintiff was granted leave to engage a private to carry out a survey on the suit property and file a report. The firm of Landscan subsequently visited the suit property and filed their report dated June 13, 2023.
8. The parties were then directed to file their submissions on the two reports but only the plaintiff filed his submissions.

Plaintiff's Submissions.

9. In his submissions dated 3rd October, 2023 learned counsel for the plaintiff gave a background of the suit and submitted that the court ought to adopt the survey report dated 13th June, 2023 whose findings were as follows:

“...The expansion from 3 meters to 9 meter reserve was not as a result of 4.5 meter distribution from the centre line of the 3m road on either side. Instead, the entire 6m needed for the road expansion came from parcel 198, occasioning the owner to lose land amounting to 0.2068 Ha (0.511ares)”
10. It is counsel's contention that if the defendants are dissatisfied with the plaintiff's surveyor's report they should be afforded an opportunity to cross-examine the surveyor so as to ascertain its accuracy rather than have the said report set aside.
11. The only issue for determination is whether the surveyor's reports determine the issues in controversy and whether the said reports ought to be adopted as an order of the court.
12. The County Surveyor's report dated 14th April, 2023 states that there is encroachment of 1.70m on the suit land if the current center line on the road is used.
13. On the other hand, the report by Landscan indicates that the defendants have encroached on the plaintiff's land by 6 meters. In view of the divergent views by the surveyors, the justice of the case demands that both surveyors be called to come and shed more lights on their reports so as to assist the court to arrive at a just decision.



**DATED, SIGNED AND DELIVERED VIRTUALLY AT ELDORET THIS 25TH DAY OF JANUARY
2024**

.....

J.M ONYANGO

JUDGE

In the presence of;

Miss Katwa for the 1st and 2nd Defendants

Ms. Moronge for Mr. Kiboi for the Plaintiff

Court Assistant:

