



**Muya & another v Mungai & another (Environment & Land Case
70 of 2017) [2024] KEELC 769 (KLR) (20 February 2024) (Judgment)**

Neutral citation: [2024] KEELC 769 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND CASE 70 OF 2017
MN GICHERU, J
FEBRUARY 20, 2024**

BETWEEN

PAUL WACHIRA MUYA 1ST PLAINTIFF

JAMES GITHOGO 2ND PLAINTIFF

AND

GODFREY NJENGA MUNGAI 1ST DEFENDANT

PETER NDUATI NJOROGE 2ND DEFENDANT

JUDGMENT

1. The plaintiffs seek the following reliefs against the two defendants both jointly and severally –
 - a. An injunction to restrain the defendants from closing, developing, blockings fencing, constructing on or in any way dealing with the access road that is Ngong/Ngong/47759, to the prejudice of the Plaintiffs or preventing the plaintiffs from using the said access road pending the hearing and determination of this suit.
 - b. A declaration that Ngong/Ngong/47759 is a road of access of the plaintiffs' parcels.
 - c. A cancellation of the name of the 2nd defendant as proprietor of the said Ngong/Ngong/47759.
 - d. Costs of the suit.
 - e. Such other or further order or relief the court may grant.This is as per the plaint dated 7/1/2010.
2. The plaintiffs' case is as follows. The first plaintiff is the registered owner of L.R. Ngong/Ngong/30710 while the second plaintiff is the registered owner of L.R. Ngong/Ngong/30711. They bought their respective parcels from one Bilhah Wambui Mururu who owned L.R. No. Ngong/Ngong/23679



- which was subdivided to create the two parcels owned by the plaintiffs. There is an access road that served the plaintiffs' land as well as L.R. Ngong/Ngong/26507, 26508, 2496 and 25476.
3. The defendants have colluded with the District Land Registrar Kajiado and unlawfully cancelled the access road to the plaintiffs' two portions and registered it as L.R. No. 47759 in the name of the second defendant. The second defendant has fenced off the access road, constructed a septic tank across as a consequence of which the plaintiffs have lost access to their parcels of land whose value has diminished. The plaintiffs are suffering loss that is irreparable. That is why they filed this suit.
 4. In support of the case, the plaintiffs filed the following evidence.
 - a. Witness statements by the two plaintiffs dated 28/5/2019.
 - b. Copies of mutation forms for L.R. Nos. Ngong/Ngong/23678, 24295, 25475, 23679 and 26507.
 - c. Copy of letter to area chief dated 12/4/2007.
 - d. Copy of letter to District Land Surveyor dated 17/4/2007.
 - e. Copy of letter to District Land officer dated 17/5/2007.
 - f. Two photographs.
 - g. Copies of title deed for L.R. Nos. Ngong/Ngong/30710 and 30711.
 5. In their defence and counter claim dated 3rd June 2019, the defendants aver as follows. Firstly, they deny the plaintiffs' claim in its totality.

Secondly, the defendants aver that at the time L.R. Nos 23678 and 23679 came into existence on 17/9/1999, they had direct access from the main tarmac road and none enjoyed a right of easement over the other.
 6. Thirdly, the defendants have no authority over the District Land Registrar Kajiado and did not undertake any official duties of the Land Registrar.

Fourthly, any road that may have been created was private for the exclusive use of the proprietor of L.R. Ngong/Ngong/24296 and the same was never a public road.
 7. Finally, in the counterclaim, the defendants accuse the plaintiffs of damaging the second defendant's property comprising of cedar posts, barbed wire, poles, iron sheets, nails, cement, ballast, sand and other costs all valued Kshs. 125,260/=. The second defendant claims damages for this loss and calls for the dismissal of the plaintiffs' suit.
 8. In support of their defence and counterclaim, the defendants filed the following evidence.
 - a. Witness statements by Peter Nduati Njoroge and Godfrey Njenga Mungai.
 - b. Copies of letters dated 23/5/2007, 7/6/2007 and 2/7/2007 by the defendants' advocate.
 - c. Copies of mutation forms for L.R. Ngong/Ngong/22529, 23471, 23678, 24295, 25475 and 26507.
 - d. Copies of receipts for various construction materials.
 9. At the trial on 20/11/2019 the first plaintiff and the second defendant testified and were cross-examined by counsel for the adverse party. They produced their documents as their exhibits.



10. Only the plaintiffs' counsel filed written submissions dated 28/1/2020 in which he identified the following issues for determination.
 - a. Whether there existed an access road which served L.R. Ngong/Ngong/30710 and 30711 on one side Ngong/Ngong/26507, 26508, 2496 and 25476 on the other side?
 - b. Whether the defendants colluded with the District Land Registrar Kajiado in cancelling the access road used to serve L.R. Ngong/Ngong/30710 and 30711.
 - c. Whether the plaintiffs have suffered loss as a result of the blocking of the access road.
 - d. Whether the plaintiffs were involved in the process of relocating the access road.
 - e. Whether this court has jurisdiction to hear and determine this suit.
 - f. Which party should bear the costs.
11. I have carefully considered all the evidence adduced by the plaintiffs and the defendant. I have also considered the report dated 24/9/2018 by the District Surveyor which was filed in court on 24/9/2018. I have also considered the submissions on record and the law cited therein. I make the following findings on the issues raised by the plaintiffs' counsel.
12. On the first issue, I find there exists an access road serving L.R. Ngong/Ngong/30710 and 30711 on one side and Ngong/Ngong/26507, 26508, 2496 and 25476 on the other side. This is confirmed by the mutation form registered on 11/2/2000 and produced as exhibit 1 by the plaintiff. This mutation form was registered on 11/2/2000.
13. On the second issue of collusion between the defendants and the District Land Registrar Kajiado in cancelling the access road, I find no evidence of collusion adduced by the plaintiff. I however find that the defendants ceased being the owners of the land the moment the mutation was registered. This being the case, the said road was not available for reparation. What was available to the defendants was the land for which they had title deeds and that did not include the access road.
14. Regarding the third issue, I find that the plaintiffs have suffered loss because even according to the report of the District Surveyor, the shops which are along the 6.0 meter road have been rendered irrelevant hence making them suffer business wise. This is what the report dated 24/9/2018 says at the conclusion.
15. It is my finding that the plaintiffs were not involved in the process of relocating the access road. Had they been involved, they would not have filed this suit in the first place.
16. On jurisdiction, I find that this court is clothed with power to determine the dispute because it relates to the use of the access road. Under Article 162 (2) (b) of *the Constitution* it is provided as follows.
 - (2) "Parliament shall establish courts with the status of the High Court to hear and determine disputes relating to –"
 - (b) The Environment and the use and occupation of, and title to land".
17. In conclusion, I find merit in the plaintiffs' suit and I enter judgment for the plaintiffs against the defendants jointly and severally in terms of prayers (b) and (c) of the plaint dated 7/12/2010.
18. For the reasons already given, I dismiss the defendants' counterclaim dated 3/6/2019 with costs to the plaintiff whom I also award the costs of the suit.



It is so ordered.

DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 20TH DAY OF FEBRUARY 2024.

M.N. GICHERU

JUDGE

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