



Muriuki & another v Githiomi (Environment and Land Miscellaneous Application E009 of 2023) [2024] KEELC 3769 (KLR) (13 May 2024) (Ruling)

Neutral citation: [2024] KEELC 3769 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E009 OF 2023
MN GICHERU, J
MAY 13, 2024**

BETWEEN

PETER MURIUKI 1ST APPLICANT

FELISTA NYAMBURA NJUGUNA 2ND APPLICANT

AND

SALIM M. GITHIOMI RESPONDENT

RULING

1. This ruling is on the notice of motion dated 20/2/2023. The motion which is brought under Sections 30, 13 (1) and 2 of the Environment and Land Court Act, Sections 1A and 3A of the [Civil Procedure Act](#) and all other enabling provisions of Law seeks two orders,

1. That the court be pleased to adopt the order of the Land Disputes Tribunal Kajiado North District delivered on 6/6/2011 as pertaining to Land Parcel No. Ngong/Ngong/50379.
2. The costs of this application be provided for.

2. The motion is based on eleven (11) grounds and is supported by an affidavit sworn by the 1st applicant which has five (5) annexures. In summary the applicants state as follows.

Firstly, they are the registered owners of L.R. Ngong/Ngong/50379 which is adjacent to the respondent's L.R. No. Ngong/Ngong/8592.

Secondly, when the applicants bought their land, it had an access road that served it.

Thirdly, the respondent encroached on the said access extending his land to include the said access road.

Fourthly, the dispute was referred to the Land Disputes Tribunal in Case No. TC 358/3/11 and in an award dated 6/6/2011, the tribunal ordered that the District Surveyor to enter the land and open the



said road as it is in the mutation form and Registry index Map and the District Land Registrar Kajiado North to be involved in case of any amendments of the title deeds.

Fifthly, the Magistrates Court in Miscellaneous Application Number 30 of 2014 failed to adopt the award of the tribunal and the ground of lack of jurisdiction.

Finally, the only way to give effect to the judgment of the tribunal is for this court to allow the motion so that justice is done to the applicants.

3. The motion is opposed by the respondent who has filed a notice of preliminary objection dated 3rd April 2023 in which he raises two grounds as follows.
 1. That this court lacks the requisite jurisdiction to entertain the application.
 2. That the application is also time barred by virtue of the provisions of the Limitation of Actions Act.
4. I have carefully considered the motion in its entirety including the grounds, the affidavit, annexures and the preliminary objection. I find that the following issues emerge from the entire motion.
 1. Whether this court have jurisdiction to entertain the application.
 2. Whether the motion is time barred.
5. On the first issue, I find that the court has jurisdiction to entertain the application. Article 162 (2) (b) of the *Constitution* of Kenya gives power to this court to deal with any dispute relating to the Environment and the use and occupation of, and title to land. In this case, the applicants are seeking to use the access road which was closed and encroached upon by the respondent. This encroachment was confirmed by a court of competent jurisdiction, namely the District Land Disputes Tribunal.
6. Secondly, ordinarily the award of the tribunal was to be implemented by the Magistrate's Court under Section 7 (2) of the *Land Disputes Tribunals Act* (now repealed). This Act was repealed by Section 31 of the *Environment and Land Act* whose date of commencement was 30/8/2011. This is why the Magistrate's Court could not entertain any application for adoption of the award in the year 2014.
7. Thirdly, under Section 23 of the *land Registration Act* as well under Section 26 of the *Registered Land Act* (Cap 300), now repealed), the respondent could not effect reparation of a public access road. If any reparation took place, it could only be over land which he was owned and that did not include a public access road.
8. In regard to the second issue of whether the motion is time barred, I find that it is not and cannot be time barred. The applicants are not seeking to recover any land of their own. What they seek is the re-opening of a public access road created in year 1982. Such a road can never be lawfully closed by an adjoining land owner under any circumstances.
9. For the above stated reasons, I allow the notice of motion dated 20/2/2023 as drawn and I award the costs to the applicants.

It is so ordered.

DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 13TH DAY OF MAY 2024.

M.N. GICHERU

JUDGE

