



**Kinyua v Mwangi & 2 others (Environment & Land Case  
E118 of 2023) [2024] KEELC 5589 (KLR) (15 July 2024) (Ruling)**

Neutral citation: [2024] KEELC 5589 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE E118 OF 2023  
LN MBUGUA, J  
JULY 15, 2024**

**BETWEEN**

**STEPHEN MACHARIA KINYUA ..... PLAINTIFF**

**AND**

**MICHAEL WACHIRA MWANGI ..... 1<sup>ST</sup> DEFENDANT**

**EUNICE THUMBUI ..... 2<sup>ND</sup> DEFENDANT**

**NAIROBI LAND REGISTRAR ..... 3<sup>RD</sup> DEFENDANT**

**RULING**

1. The plaintiff has filed this suit accusing the defendants of blocking access road to his property. In opposition thereof, the 1<sup>st</sup> defendant has similarly accused the plaintiff of trespass through a built up wall, verandah and canopy.
2. The plaintiff filed an application dated 13.10.2023 seeking injunctive orders against the defendants as well as unlimited and unhindered access to her parcel of land.
3. In rejoinder the 1<sup>st</sup> respondent filed Grounds of Opposition dated 14.12.2023 contending that the dispute falls under the provisions of Section 18 and 19 of the [Land Registration Act](#).
4. Before the court could give directions on the prosecution of the pending Application, the parties agreed by consent on 13.12.2023 that the director of survey could conduct a survey on the 3 properties in dispute and to file a report thereof.
5. The report has since been filed but plaintiffs counsel desires to cross examine the author of the report. That prayer was not objected to by counsel for the defendant. However, 1<sup>st</sup> defendant counsel contends that the report vindicates them hence the temporary orders stopping their client from construction should be vacated.



6. I have considered the issues so far presented before me. The matter is at the infancy stage and the court cannot make any conclusive findings.
7. On the issue of cross examination of the author of the report dated 15.4.2024, this court declines to allow that application for the following reasons: Firstly, the matter is at the interlocutory stage and the court is not dealing with issues of admissibility of evidence. It is enough for the applicant at this stage to state that they would object to the report, of which at the appropriate time when the court is dealing with substantive issues for determination, parties can address the court on the production of the said report.
8. Secondly, I find that in the grounds of opposition to the application, the provisions of Section 18 and 19 of the Land Registration Act have been invoked. At paragraph 15 of the plaint, the plaintiff contends that defendant has encroached on a public road. While at paragraph I of 1<sup>st</sup> defendants counter – claim, 1<sup>st</sup> defendant avers that Plaintiffs verandah and wall have encroached on his land.
9. By and large it appears that the dispute touches on boundaries. However, the report availed to his court is not the one envisaged under Section 18 and 19 of the Land Registration Act.
10. To this end, I make reference to be case of Henry Kosgey v Brian Cuthbert & Another [2019 EKR where the court stated that the jurisdiction of the court in determining boundary disputes should be considered in view of the provisions of Section 18 of the Land Registration Act which stiputes that;
  - (2) The court shall not entertain any action or other proceedings relating to a dispute as to the boundaries of registered land unless the boundaries have been determined in accordance with this section.”
11. It is therefore premature for parties to come to court for ascertainment of their rights in such circumstances before the Land Registrar determines the dispute.
12. That being the case, the court gives fresh directions as follows:
  1. That the dispute is hereby referred to the Land Registrar who is to file a report with assistance of the surveyor in tandem with the provisions of section 18 & 19 of the Land Registration Act.
  2. I discern that the plaintiff has an access to his property hence any interim orders given herein are hereby discharged.
  3. In terms of the overriding objective set out under Section 1A and B of the Civil Procedure Act, the application dated 13.10.2023 is marked as SPENT.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 15<sup>TH</sup> DAY OF JULY, 2024 THROUGH MICROSOFT TEAMS.**

**LUCY N. MBUGUA**

**JUDGE**

**In the presence of:-**

Maina for plaintiff

Mrs Okulo for 1<sup>st</sup> & 2<sup>nd</sup> defendant

Court assistant: Eddel

