



**Nyangenga v Nyamira County Government (Environment & Land Case 88 of 2021) [2024] KEELC 7099 (KLR) (24 October 2024) (Judgment)**

Neutral citation: [2024] KEELC 7099 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NYAMIRA  
ENVIRONMENT & LAND CASE 88 OF 2021**

**JM KAMAU, J**

**OCTOBER 24, 2024**

**BETWEEN**

**JAMES OGATA NYANGENGA ..... PLAINTIFF**

**AND**

**NYAMIRA COUNTY GOVERNMENT ..... DEFENDANT**

**JUDGMENT**

1. In the Complaint dated 27/10/2010 and amended on 14/11/2014, the Plaintiff prays for Judgment against the Clerk, the Town Council of Keroka and Nyamira County Government jointly and severally for;-
  - a. Kshs. 3,165,000/= being the reconstruction cost of damaged buildings (by the Defendants) plus kshs. 144,000/= being “rents the Plaintiff would have earned since May 2004 to-date.”
  - b. Mesne profits
  - c. Costs.
  - d. Any other relief(s) the Court deemed fit and proper to grant.
2. The basis of the Plaintiff’s claim is that he has at all material times been the registered owner of the property known as east Kitutu/Mwamangera/1376. In 1999, the Defendants gave a Notice to the Plaintiff to remove his buildings erected thereon alleging that the same were on a road reserve in spite of the Plaintiff proving to the Defendant otherwise and even producing to the Defendants building plans approved by the latter. The Plaintiff moved to Kisii Chief Magistrate’s Court against both Defendants in Kisii CMCC No. 1021 of 1999 where the suit was undefended and the Defendants were permanently restrained from carrying out the intended demolition without compensation which orders the Defendants disregarded and demolished the building and as a consequence the 1<sup>st</sup> Defendant was found guilty for contempt of Court and fined the sum of Kshs. 20,000/=.



3. The 1<sup>st</sup> Defendant denied this claim vide his Statement of Defence dated 23/11/2020 in its entirety. On 19/3/2015 the 3<sup>rd</sup> Defendant, Nyamira County Government, having been joined in the case vide Court orders dated 20/2/2014, filed a Defence on 19/3/2015 averring to be a stranger to all the liability averments in the Plaint. The Defendant also pleaded that the suit was res judicata and time barred and that the same should be struck out.
4. It is interesting to note that initially the case was against the clerk, Town Council of Keroka and not against the clerk as 1<sup>st</sup> Defendant and Town Council of Keroka, 2<sup>nd</sup> Defendant. Later, due to some mistake (typographical, I believe) somehow the 2 were spilt. I wonder who “the clerk” is. This mistake was carried forward and then dropped later in the further amendment of the Plaint dated 27/4/2017. We now have only one Defendant, Nyamira County Government. The Defendant stood by her Defence dated 19/3/2015. The case commenced on 28/7/2020 when Lucas Adwera, a Quantity Surveyor, took to the witness box and produced the Report dated May 2008 in respect of the demolished home estimating the cost of reconstruction at kshs.3,165,000/=. On cross-examination by Mr. Nyachiro for the Defendant, Mr. Adwera said that he relied on a building plan to arrive at the figure of the demolished building. He said that he went to the ground on 15/5/2008 and that he put the cost of the building at kshs.900,000/=. On re-examination by the Plaintiff’s Counsel Mr. Momanyi, the Quantity Surveyor said that the building had been completed before it was demolished. PW2, Joseph Muhindi Asubi, a Surveyor specialized in cartography produced a Report attaching a sketch map of east Kitutu/Mwamangera/1376. He said that he did visit the suit land on 20/2/2015. According to his Report, the property stands on the southern side of the new road. It measures 0.035 Hectares. But in the Green Card it is supposed to measure 0.05Hectares. The road therefore ate up 0.012Hectares. It therefore has a reduction of 30%. The road by the Defendant therefore took part of the Plaintiff’s land. On cross-examination by Mr. Nyachiro for the Defendant, the Surveyor said that the road passes on the southern part yet sheet No. 31 shows the road to be on the northern part. The map was drawn in January 1970 when the road existed. He also said that the road does not pass through Plot Nos. east Kitutu/Mwamangera/1374 nor east Kitutu/Mwamangera/1376 in the original map. But today it does on the ground. From the 1970 RIM, the road does not exist as it is on the ground today. On re-examination the Surveyor said that the road was created in 2004.
5. In his evidence, the Plaintiff the over 90-year-old James Ogata Nyatunda adopted his statement dated 11/7/2012 that gives flesh to the averments in his Plaint. He also produced the following documents to buttress his case viz;
  1. Mutation Forms in respect of Land parcel No. east Kitutu/ Mwamangera/1376.
  2. Building Plan in respect of Land parcel No. east Kitutu/ Mwamangera /1376.
  3. Registry Map.
  4. Valuation Report dated 15/5/2008 for Land Parcel Title No. east Kitutu /Mwamangera/1376.
  5. Decree issued on 2/3/2004 in respect of kisii CMCC no.1021 of 1999.
  6. Title Deed in respect of Land Parcel Title No. east Kitutu/ Mwamangera/1376.
  7. Official Search for Land Parcel Title No. east Kitutu/ Mwamangera/ 1376.
  8. Certified copy of the Ruling in respect of Kisii HC. Misc. Application No. 66 of 2004.
  9. Certified copy of the Ruling in respect of Kisii HC. Misc. Application No. 55 of 2009.
  10. Notice from Keroka Township.



11. Valuation Report by Otundo & Associates.
  12. Demand Notices.
6. He testified that the Defendant destroyed his houses in spite of a Court Order barring the Defendant from doing so in a suit the Defendant did not defend. There were tenants inside one of the houses. As a result of this demolition the Town Council of Keroka was condemned to pay a fine of Kshs.20,000/= for contempt of Court. The Plaintiff said that he had bought the suit premises from one Francis Omurwa Nyasende in 1981 or thereabout and obtained a Title Deed for the same in the said year. He said that after purchasing the property the Plaintiff looked for a Qualified Surveyor from the Survey Office, Kisii a Mr. N. L. Karogi to confirm the location and measurements of the property on the ground and also he had the proposed building plans approved by the Defendant's Physical Planning officer on 18/5/1990 and the District Health officer on 20/6/1990 and the clerk, Town Council of Keroka on 2/7/1990. He also testified that he used to earn rents of Kshs. 2,000/= per month.
  7. On cross-examination by Mr. Nyachiro for the Defendant, the Plaintiff said that he did not bring to Court any evidence to show the Rent he used to receive and that such documents were at home.
  8. On re-examination by his Counsel, Mr. Momanyi Aunga the witness said that he did a valuation of his last building immediately after the demolition.
  9. PW4 Francis Omurwa Nyabende who is now over 85 years old testified that he is the one who sold the suit property to the Plaintiff in 1981 having sub-divided the original mother land into 6 parcels of land. The suit land measures 54 x100 feet. He stated that there was no road of access in the map running through the suit land but that now there is an unlawful road cutting through the land.
  10. Having had the Plaintiff's case closed, the County Surveyor of the Defendant Mr. Robert Torori who has held that position since 2011 took to the witness alter. Producing the following documents; -
    1. Registry Index Map.
    2. Report by the County Surveyor.

and adopting his statement dated 17/2/2020, the witness Mr. Torori admitted that the map relating to east Kitutu/Mwamangera Sheet No. 31 was prepared by the Survey of Kenya in January 1970 but that there have been so many amendments to the same culminating in the one of 18/3/2021. east Kitutu/Mwamangera/454 was lastly amended on 27/8/1981 from which east Kitutu/Mwamangera/1374, 1375 and 1376 were excised. There is a road of access reserved between 1121 and Parcel Number 454 and that Parcel Number 1376 has encroached onto the access road. He finally said that the road existed since 1970.

11. On cross-examination by Mr. Momanyi, Mr. Torori admitted that the new road has taken part of Land Parcel No. 1376. He was not aware of the Court orders in case No Kisii CMCC No.1021 of 1999 nor Kisii High Court Miscellaneous Application No. 66 of 2004 on the disobedience of the court orders therein and on re-examination by Mr. Nyachiro, Mr. Torori said that the road remains as it has always been since 1970 but that sub-divisions 1374, 1375 and 1376 were registered on 30/5/1981.
12. That marked the close of the Defendant's case and by necessary extension the entire case.
13. Having invited the parties to file written submissions and parties having complied, it is now my humble duty to connect the facts in this case with a Decision on all the issues as discerned from the pleadings.
  - a. Is the Plaintiff the lawfully registered proprietor of all that parcel of land known as L.R. NO. east Kitutu/Mwamangera/1376?



- b. Did the Plaintiff ever build houses on the suit land?
  - c. If the decision is in the affirmative, were the houses demolished by the Defendant?
  - d. If so, was the demolition lawful?
  - e. And if so, what is the entitlement of the Plaintiff, if any?
14. On the first issue, the Plaintiff produced a Title Deed in respect of east Kitutu/Mwamangera/1376 and an official search showing that the same was registered in his name on 18/12/1981. There was no joinder to this contention by the Defendant save that the Defendant put the Plaintiff to strict proof on the same and the latter did rise to the occasion quite positively. The Plaintiff also produced a Decree from the Chief Magistrate's Court at Kisii in Kisii CMCC No.1021 of 1999 ordering the Keroka Town Council not to demolish the Plaintiff's premises on Plot No. east Kitutu/Mwamangera/1376 and in the alternative, full compensation be made before the demolition. The Decree is dated 14/7/2000. In Kisii High Court Miscellaneous Application No. 66 of 2004 Justice Kaburu Bauni found the Town Clerk of Keroka Town Council and the Keroka Town Council guilty of the demolition and actually did fine Keroka Town Council Kshs.20,000/= to be paid within 30 days with effect from 22/5/2006. This confirms that there were indeed buildings on the suit land and that the same were demolished by the Defendant's Council. The demolition was not lawful because as has been shown by the Plaintiff and his witnesses, there was no provision of the road of access through the Plaintiff's suit land until long after the Plaintiff had already bought the land and that the Plaintiff made an objection to the amendment of the maps which fell on deaf ears. Worse still, the demolitions were carried out against the orders of a competent Court of law which did in fact attract punitive measures against the Defendant. It is sad to observe that the Plaintiff had been given a building plan approved by the Defendant in respect of the said buildings and the Registry Map showed that there was no road of access through the suit land. How could the Defendant have approved the buildings on a parcel of land if she knew that there was provision for a road of access and not take the same into consideration?
15. What then is the commensurate compensation for the Plaintiff? I have said severally in past Judgements involving the Defendant that while I appreciate the fact that the Defendant has found herself in need of land to expand the infrastructure to properly serve her residents, that is not a license to take over her residents' land in order to put up the much-needed infrastructure. What then should she have done? The concept of compulsory acquisition of private land subject to adequate compensation exists. There is no lacuna in law. This should have been put in motion. A senior citizen like the Plaintiff must have been of age in the last years of colonial times and must have seen how the then illegitimate rulers treated the people with disrespect, arrogance, humiliation, shame, disgrace, ignominy, ridicule, dishonour, impertinence, disdain, disparagement, indignity and in a cruel, brutal, barbaric and above all in a ferocious manner. We must show them that we are in an independent Kenya.
16. For the serious misconduct of the Defendant whose servants were grossly and wantonly reckless and whose behavior was destructive to the Plaintiff's property, the Court will award the Plaintiff Punitive Damages on top of the compensatory Damages sought. This should serve as a deterrent measure against specific misconduct. The purpose of the Punitive Damages is to communicate to the Defendant and the general public that courts will not tolerate such misconduct. This will always remind the Defendant that her residents and their property are not to be taken for granted.
17. In this case I have been shown a Valuation Report showing the value of the houses to be kshs.3,165,000/=. I will reduce this to kshs.2,500,000/=. I will also award the Plaintiff Kshs. 750,000/= as Punitive Damages. There is no proof that there were rent-paying tenants and that prayer fails as



well as that of mesne profits. Costs follow the event and the same are allowed herein in favour of the Plaintiff. There shall be interest on the above as follows: -

- a. Special damages of Kshs. 2,500,000/= with effect from the time of filing suit till payment in full.
- b. Punitive damages of Kshs. 750,000/= from the time of this Judgment until payment in full.
- c. Interest on costs with effect from the time of this Judgment till payment in full.

This is the Judgement of the Court.

**JUDGMENT DATED, SIGNED AND DELIVERED AT NYAMIRA THIS 24TH DAY OF OCTOBER, 2024.**

**MUGO KAMAU**

**JUDGE**

In the Presence of: -

Court Assistant: Brenda

Plaintiff's present in person

Defendants' Counsel: Ms. Odhiambo holding brief for Mr. Nyachiro.

