



**Divisi v Mambili (Environment & Land Case 191 of 2013)
[2024] KEELC 14002 (KLR) (16 December 2024) (Ruling)**

Neutral citation: [2024] KEELC 14002 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA
ENVIRONMENT & LAND CASE 191 OF 2013
DO OHUNGO, J
DECEMBER 16, 2024**

BETWEEN

ALFRED AKHISERO DIVISI PLAINTIFF

AND

CHARLES MAMBILI DEFENDANT

RULING

1. Judgment was delivered in this matter by N.A. Matheka, J. on 24th July 2019 as follows:

I find that the plaintiff has proved his case on a balance of probabilities and I grant the following orders;

1. The defendant is to open the access road to the plaintiff's land L.R. Kakamega/Virembe/255 as surveyed by the government and in default the land Registrar Kakamega and The District Surveyor Kakamega do visit L.R. Kakamega/Virembe/255 and L.R. Kakamega/Virembe/256 and survey the same and open the access road to the plaintiff's land L.R. Kakamega/Virembe/255.
2. Costs to the plaintiff.
2. Subsequently, the Plaintiff moved the Court through Amended Notice of Motion dated 10th February 2023, whereupon the Court made orders on 27th February 2023 mandating the OCS Shisasari Police Station and the Chief of Virembe Location to provide security to the Land Registrar Kakamega and the District Surveyor Kakamega to enable them to open the access road as ordered in the judgement. Counsel for the Plaintiff later informed the court on 25th October 2023 that the survey was carried out.
3. The Plaintiff has now approached the Court through Notice of Motion dated 4th July 2024, which is the subject of this ruling. The following orders are sought in the application:



1. That this application be heard on priority basis.
 2. That an eviction order be issued against the defendant/respondent herein from the access road to the applicant's home as per the County Land Registrar/Surveyor's Report dated 8th September, 2023.
 3. That all the materials, trees, buildings, crops and any other obstructive materials on the said access road be removed.
 4. That the OCS, Shinyalu/Shisasari Police Station be mandated to provide security during the exercise of eviction, and removal of all materials on the access road.
 5. That the respondent bear all the costs.
4. The application is based on the grounds stated on its face and is supported by an affidavit sworn by the Plaintiff. He deposed that the County Surveyor conducted a survey and filed a survey report dated 8th September 2023 and that the Defendant had refused to honour the report despite a demand being served on him. He urged the Court to grant the orders sought in the application.
 5. Although evidence of service upon him was availed, the Defendant did not respond to the application. Counsel for the Plaintiff urged the Court to grant the orders sought.
 6. I have considered the application, the supporting affidavit and the submissions. The Plaintiff is a successful litigant with a decree in his favour, requiring the Defendant to open the access road to the Plaintiff's land parcel number Kakamega/Virembe/255 and in default the Land Registrar Kakamega and the District Surveyor Kakamega to visit parcels number Kakamega/Virembe/255 and Kakamega/Virembe/256 and open the access road. The Plaintiff has annexed a copy of the surveyor's report dated 8th September 2023. A perusal of the report shows that the surveyor visited the site on 7th September 2023 and established that the Defendant has a building blocking the access road. The surveyor prepared and annexed a sketch to illustrate his findings. Additionally, the Plaintiff annexed a copy of a demand letter dated 6th November 2023 requiring the Defendant to remove the offending building.
 7. I find merit in the application, and I will allow it in a modified form, with a view to aligning it with the judgment of the Court. Further, the Court is keen to ensure that the Defendant is personally served and given another opportunity to comply, before forceful action is taken.
 8. In the circumstances, I make the following orders:
 - a. The Defendant to open the access road to the Plaintiff's parcel number Kakamega/Virembe/255 and to remove his building blocking the said access road, as identified in the County Land Surveyor's Report dated 8th September 2023, within 30 (Thirty) days of service of these orders upon him.
 - b. In default, the Plaintiff shall be at liberty to remove the Defendant's aforesaid building.
 - c. The OCS Shinyalu/Shisasari Police Station to provide security during the exercise of removal of the building.
 - d. Costs of the application are awarded to the Plaintiff.
 - e. The service referred to in (a) above to be effected in the presence of the Area Chief and an affidavit verifying the service be filed in this Court within 7 (Seven) days of the service.

DATED, SIGNED, AND DELIVERED AT KAKAMEGA THIS 16TH DAY OF DECEMBER 2024.



D. O. OHUNGO

JUDGE

Delivered in open court in the presence of:

Mr Mutoka for the Plaintiff

No appearance for the Defendant

Court Assistant: M Nguyayi

