



REPUBLIC OF KENYA



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**County Government of Meru v Mukuchia & 11 others (Civil Appeal
218 of 2019) [2025] KECA 2289 (KLR) (19 December 2025) (Judgment)**

Neutral citation: [2025] KECA 2289 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NYERI
CIVIL APPEAL 218 OF 2019
W KARANJA, J MOHAMMED & LK KIMARU, JJA
DECEMBER 19, 2025**

BETWEEN

COUNTY GOVERNMENT OF MERU APPELLANT

AND

WILFRED LIMIRI MUKUCHIA 1ST RESPONDENT
KAYOI THAMUTA MUGWIKA 2ND RESPONDENT
STEPHEN MUCHUI MWORIA 3RD RESPONDENT
NTUARA MUKUCHIA 4TH RESPONDENT
FRANCIS MWIKA 5TH RESPONDENT
GEOFFREY MUNGORI NAKULI 6TH RESPONDENT
SAMUEL KILEMI AKWALU 7TH RESPONDENT
DAVID KIRIANKI NGEERA 8TH RESPONDENT
JEREMIAH KINYUA 9TH RESPONDENT
LINTARI KENNETH GITONGA 10TH RESPONDENT
GODFREY NKUMBUKU 11TH RESPONDENT
JULIUS GAKUBI MUKUONGO 12TH RESPONDENT

(An appeal from the judgment of the Environment & Land Court at Meru (L. Mbugua, J.) dated 13th February 2019 in Meru ELC Case No. 102 of 2017)



JUDGMENT

Background

1. This appeal arises from the decision of L. Mbugua, J. in ELC No.102 of 2017 in the Environment and Land Court (ELC) at Meru. The trial court held that the County Government of Meru (the appellant) had unlawfully obstructed two public roads that have served the community since 1966, granting Wilfred Limiri Mukuchia, Kayoi Thamuta Mugwika, Stephen Muchui Mworira, Ntuara Mukuchia, Francis Mwika, Geoffrey Mungori Nakuli, David Kirianki Ngeera, Jeremiah Kinyua, Lintari Kenneth Gitonga, Godfrey Nkumbuku and Julius Gakubi Mukuongo (the 1st to 12th the respondents) permanent injunctions and directing the removal of all obstructions.
2. Specifically, the ELC granted the following:
 - a. An order of permanent injunction is hereby issued restraining the Defendant, its agents, servants or anyone acting through it from barricading, closing, or in any manner whatsoever interfering with the public roads known as Miathene to Kalimba Primary School through Miathene sub-district Hospital and Miathene Kajalu Coffee factory through Miathene sub-district Hospital, or the road to the Miathene Shopping Center;
 - b. An order is hereby issued directing the Defendant, its agents or servants to remove any offending structures erected or standing on the roads in issue and in default, the Court bailiff is empowered to remove any such offending structures at the defendant's cost;
 - c. The Defendant is hereby condemned to pay the costs of the suit.
3. The appellant appealed against the judgment on the grounds that the trial court failed to consider the availability of alternative roads; failed to give due weight to the operational needs of Miathene Sub-District Hospital; and granted orders that undermined the appellant's constitutional mandate to manage public resources.
4. The Memorandum of Appeal set out 7 grounds of appeal that the ELC:
 - i. erred both in law and in fact by finding that the appellant's restriction on the use of the three roads traversing the Miathene sub-county Hospital negated the rights of the community;
 - ii. erred both in law and in fact by failing to appreciate that Miathene sub-county Hospital serves both outpatients and inpatients and is indeed the only hospital of its level in the whole Tigania West sub-county and has an overwhelming patient population that deserved a serene environment commensurate with their status;
 - iii. erred both in law and fact by failing to find that there are alternative roads provided in the map that the respondents and other members of the public could use to access their homes without necessarily using the roads passing through the hospital;
 - iv. erred both in law and in fact by failing to appreciate the inconvenience and likely dangers imposed on the hospital administration, patients, and the hospital facilities by members of the public using the roads passing through the hospital, including but not limited to public nuisance like noise, dust, hooting, as well as insecurity;
 - v. erred both in law and in fact by granting permanent injunctive orders against the applicant, the County Government of Meru, and duly mandated by law to exercise her mandate of



public service, physical planning, and even provision of alternative roads depending on its governance policy that changes from time to time, thereby undermining the Respondent's mandate conferred under *the Constitution* and County Government laws [sic];

- vi. erred both in law and fact by failing to appreciate the contents of the scene visit report availed by the Court's Executive Officer thereby arriving at the impugned decision; and
 - vii. erred both in law and fact by failing to consider the appellant 's submissions.
5. The appellant prays for judgment against the respondent that:
- a. The impugned judgment and decree of the ELC be quashed and set aside;
 - b. This Court be pleased to dismiss the amended plaint;
 - c. This Court be pleased to grant an effective order and order the respondents to use the existing alternative public roads or as may be provided by the respondents instead of the roads passing through the Miathene Sub County Hospital; and
 - d. Costs of this appeal and that of the trial court be provided for.

Submissions by Counsel

6. When the matter came up for hearing, learned counsel Mr. Munene held brief for learned counsel Mr. Aiyeko for the appellant while learned counsel Mr. Kariuki appeared for the respondents. Counsel confirmed that they would both rely on their written submissions and did not wish to highlight.
7. Mr. Munene challenged the trial court's decision, asserting that the ELC erred in granting a permanent injunction restraining public access to roads traversing Miathene Sub-County Hospital. Counsel maintained that the trial court failed to consider the hospital's critical need for an environment conducive to patient care and disregarded the availability of alternative routes.
8. It was contended that the trial court inadequately assessed the evidence, submissions, and the scene visit report presented by the appellant. Additionally, Counsel argued that there was a need to balance public interest and individual rights, arguing that the restrictions imposed on the use of the roads were necessary to mitigate the effects of noise, dust, and public nuisance, all of which posed significant challenges to the hospital's operations. Citing jurisprudence, including *Selle & Another vs Associated Motor Boats Co. Ltd & Others* (1968) EA 123, counsel submitted that this Court should:

“Carefully re-examine all evidence and submissions carefully re-examine all relevant evidence and submissions made by both parties and render a decision solely on its consideration of the facts and applicable law.”
9. Counsel impugned the trial court's decision for allegedly unduly curtailing its constitutional prerogative to manage public resources. Counsel also alleged that the findings of the scene visit report were misconstrued and that the issuance of a permanent injunction unreasonably interfered with its discretion in managing public utilities. To buttress the appellant 's arguments, Counsel invoked precedents such as *Johnbosco Muinde Kamali & 5 others v Stephen Katili & Another*, [2019] eKLR asserting that the decision to restrict the roads was consistent with Article 24 of the Constitution, which permits reasonable limitations on rights in the interest of broader societal needs. Consequently, the appellant urged this Court to overturn the trial court's judgment and restore its administrative autonomy in managing the disputed infrastructure (the roads in issue).



10. Mr. Kariuki opposed the appeal and asserted that the roads in question had served the community since 1966, as substantiated by official Government records and corroborated by findings from the scene visit. Counsel asserted that the road closures were executed unlawfully, in a manner that was both high-handed and lacking in proper justification.
11. Counsel further submitted that the closures had neither complied with statutory requirements under the Public Roads and Roads Access Act (the Act) nor adhered to constitutional principles mandating public participation. Counsel emphasized that the roads were essential for access to homes, public institutions, and economic activities for over 3,000 residents, whose daily lives had been severely disrupted as a result of the appellant's actions.
12. Counsel highlighted constitutional safeguards under Articles 10 and 62, which affirm the importance of public participation and the protection of access to public resources. Counsel argued that the appellant failed to engage the affected community or issue requisite notices before obstructing the roads, thereby contravening established legal standards. Counsel relied on a memorandum of complaint, and survey maps to demonstrate the historical significance of the roads and the harmful impact of their closure on the livelihoods of the affected community. Counsel maintained that the trial court's findings were well-founded and aligned with constitutional and statutory mandates.
13. To reinforce the respondents' position, counsel referred to judicial precedents including *East African Cables Limited v. The Public Procurement Complaints, Review and Appeals Board & another* [2007] eKLR contending that public interest must take precedence over administrative expediency. Counsel urged this Court to uphold the trial court's judgment, emphasizing that the orders issued protected public rights against arbitrary administrative action while ensuring adherence to the rule of law. Counsel concluded that the trial court's decision to grant permanent injunctions and order the removal of obstructions was appropriate, proportionate, and in keeping with the demands of justice. Counsel urged this Court to dismiss the appeal with costs.

Determination

14. In commencing our determination of this appeal, we are mindful of our duty as set out in *Selle & Another vs Associated Motor Boats Co. Ltd & Others* (supra) namely, to reconsider and evaluate the evidence, and draw our conclusions of fact and law. Additionally, we will only depart from the findings by the trial court if they were not based on evidence on record; where the said court is shown to have acted on wrong principles of law as held in *Jabane vs Olenja* (1986) KLR 661; or where its discretion was exercised injudiciously as held in *Mbogo & Another vs Shah* (1968) EA 93.
15. Central to this dispute are two public roads: one leading to Kalimba Primary School via Miathene Sub-District Hospital and another connecting to Kajalu Coffee Factory.
16. The issues for determination in this appeal can be distilled to the following:
 - a. whether the roads in question qualify as public roads and whether the respondents' rights to access them were improperly restricted by the appellant;
 - b. whether the appellant's restriction of the roads was justified considering the operational needs of Miathene Sub-County Hospital and the availability of alternative routes;
 - c. whether the trial court erred in granting permanent injunctive orders against the appellant, effectively undermining its constitutional and statutory mandate; and
 - d. whether the trial court failed to properly consider the scene visit report, evidence, and submissions provided by the appellant.



17. Counsel for the appellant submitted that the roads' closure was necessitated by the need to maintain the operational environment of Miathene Sub-District Hospital. Counsel argued that public use of these roads caused noise, dust, and security risks, interfering with the hospital's ability to serve patients.
18. Conversely, counsel for the respondents argued that the roads had been in existence and recorded in official Government maps since 1966. Counsel argued that they had presented evidence in the form of a community memorandum of complaint, and a scene visit report. Counsel contended that this evidence established that the roads served public institutions and a community of over 3,000 residents.
19. Counsel further stated that the appellant's actions were unlawful, high-handed, and undertaken without proper justification. They relied on Sections 2 and 8 of the Public Roads and Roads Access Act, which mandates the protection of public roads, and emphasized the constitutional right to access public infrastructure under Article 62 of *the Constitution* of Kenya.
20. The record of the proceedings from the trial court reveals that the appellant failed to participate in the application for injunction and failed to call any witnesses at the trial despite the availability of their key witness who even attended the scene visit. They failed to produce any evidence. Instead, they relied on their closing submissions. This procedural lapse handicapped their defence and the trial court could only work with the evidence adduced by the respondents. On 29th October 2018, the appellant marked its case as closed without calling any witnesses. The record of appeal does not contain a Statement of Defence. It only contains submissions and the appellant's interlocutory application to reopen the case dated 16th November 2018 which was then dismissed for want of prosecution on 27th of November 2018. The appellant filed submissions on 29th October 2018.
21. A scene visit was conducted and a report dated prepared between 31st May 2017 (when the trial court made the order for a scene visit) and 5th July 2017 (the date of the report) documented that the roads were obstructed by barricades and structures erected by the appellant. The report also confirmed that some blockages had been demolished following public outcry, but other obstructions persisted. The trial court found that the respondents' evidence was uncontroverted and ruled that the appellant's actions were unlawful, granting the respondents' prayers for permanent injunctions and the removal of obstructions on the road in issue.
22. The Court must first determine whether the roads in question qualify as public roads. Section 2 of the Act defines public roads as those reserved for public use and recorded in government maps. It defines a public road as:
 - a. any road which the public had a right to use immediately before the commencement of this Act;
 - b. all proclaimed or reserved roads and thoroughfares being or existing on any land sold or leased or otherwise held under the East Africa Land Regulations, 1897, the Crown Lands Act, 1902, or the Government Lands Act (Cap. 280), at any time before the commencement of this Act;
 - c. all roads and thoroughfares hereafter reserved for public use.
23. Section 14(1) of the Act provides that alteration or cancellation of public road alignments but requires sufficient cause and prior notice to the affected persons. Article 62 of *the Constitution* of Kenya classifies all public land, including roads and thoroughfares, as public property, emphasizing the importance of preserving public rights of way as communal assets. It states:

“Power to cancel or alter the road of access



It shall be competent for a board for sufficient cause to order the cancellation or alteration of the alignment of a road of access, provided due notice has been previously given to any person who might be affected by such order.”

24. The evidence presented by the respondents during the trial, including the maps and scene visit report, demonstrates that the roads were planned, existed on official records, and served the public since 1966. The appellant failed to produce any evidence to rebut this evidence and we cannot fault the court for reaching the finding that there existed public roads that had to be dealt with by the applicable law. If the maps were incorrect, the appellant, as the devolved Government tasked with managing these roads for the public, would have been best placed to provide alternative maps. It failed to do so. The maps presented to the trial court were admitted as evidence and were not challenged. They enjoy a presumption of validity.
25. The scene visit report indicates that some obstructions were created as recently as 2017. This undermines the appellant’s claim that the roads were historically unsuitable for public use. The scene visit report shows that the Hospital Administrator admitted to the Executive Officer (commissioned by the court to conduct the visit) that the blockages and constructions of the structures all happened in 2017. Where there was a dispute, the Executive Officer made a recommendation that it was apparent to him that the roads had not been blocked for more than six months before the site visit. We find that the roads in issue were public.
26. Counsel for the appellant argued that the roads’ closure was necessary to protect the hospital’s environment. However, actions limiting public rights must be carefully tailored, impair rights as minimally as possible, and be proportionate to the intended objectives. Blocking public roads entirely does not meet this standard, especially when less intrusive measures, could have been employed and in strict compliance with the requirements of the law and specifically Section 14 (1) of the Act as well as the constitutional imperatives of fair administrative action and public participation.
27. Counsel for the appellant argues that the issuance of a permanent injunction would unduly interfere with its constitutional and statutory mandate to manage public utilities, including the subject roads. We do not think so. While the court recognizes the importance of public bodies’ discretion in fulfilling their duties, such mandates must also be exercised in accordance with the law. The court retains the authority to intervene where it is demonstrated that a decision or action by a public body is unlawful or unreasonable. In this regard, the decision in *Associated Provincial Picture Houses Ltd v. Wednesbury Corporation* [1948] 1 KB 223 remains instructive. Lord Greene, MR, emphasized that, while Courts should not lightly interfere with decisions made within the lawful discretion of public bodies, judicial oversight is warranted where the decision is “so unreasonable that no reasonable authority could ever have come to it.”
28. Lord Greene, MR in *Associated Provincial Picture Houses Ltd v Wednesbury Corporation* (supra) outlined the test of reasonableness as follows:

“It is true to say that, if a decision on a competent matter is so unreasonable that no reasonable authority could ever have come to it, then the Courts can interfere. That, I think, is quite right; but to prove a case of that kind would require something overwhelming.”
29. In our considered view, the appellant’s decision to obstruct the public roads in question, without adequate justification or proper adherence to statutory requirements, constitutes an unreasonable and unjustifiable action. The respondents demonstrated, with uncontroverted evidence, that these roads have been in existence and essential for the community’s access to their homes, institutions, and



livelihoods since 1966. The appellant failed to provide any plausible defence or alternative perspective during the trial.

30. Their actions align with the definition of unreasonableness as expounded by this Court in *ABN Amro Bank NV v Kenya Revenue Authority* [2017] eKLR citing *Associated Provincial Picture House Ltd v Wednesbury Corporation* (supra). The Court stated as follows:

“It has frequently been used and is frequently used as a general description of the things that must be done. For instance, a person entrusted with discretion must, so to speak, direct himself properly in law. He must call his own attention to the matters that he must consider. He must exclude from his consideration matters that are irrelevant to what he has to consider. If he does not obey these rules, he may truly be said, and often is said to be acting “unreasonably.” Similarly, there must be something so absurd that no sensible person could ever dream that it lay within the powers of the authority.”

31. As regards proportionality, the Supreme Court of Canada explained in *R v Oakes* (1986) 1 SCR 103 that the measures adopted in a decision or action must be carefully designed to achieve the objective in question; should impair as little as possible any relevant rights or freedoms, and there must be a proportionality between the effects of the measures, and the objective. In our view, the explanation provided fails this test as well. The appellant’s actions were disproportionate, causing undue hardship to a community of over 3,000 residents while failing to present less intrusive alternatives or comply with statutory requirements such as providing notice or engaging stakeholders. We find that the trial court rightly concluded that the appellant’s conduct deserved judicial sanction, and we fully agree with its findings and the remedies granted.
32. It is a fundamental principle of administrative law that public bodies hold resources such as public roads and utilities in trust for the public. However, this trust must be exercised with accountability and in strict adherence to *the Constitution* and relevant statutes. The assertion that issuing an injunction would interfere with the appellant’s constitutional mandate must be balanced against the public interest and the lawful obligations imposed on the appellant.
33. A public body’s discretion is not unfettered; it must be exercised reasonably, rationally, and for the intended purposes of the enabling legislation. As noted in the *Wednesbury* case, such discretion must not be “manifestly unreasonable” or fail to consider material factors necessary to make the decision lawful and justifiable. Blocking a road that has been in existence on official records since 1966 without notice to its users and the general public is unreasonable. The appellant, who as a public body is the holder of official records for public assets under their mandate, failed to dispute the authenticity of the survey maps presented to the trial court.
34. We have no grounds to impugn the learned Judge’s acceptance of the records as proof that a public road existed from 1966. The appellant’s assertion that the roads were historically unsuitable is unsupported and we reject it since the scene visit report produced before the trial court showed that the obstacles were placed a short time before the scene visit conducted on the roads in issue.
35. The argument that a permanent injunction would curtail the appellant’s ability to repair, maintain, or improve public roads cannot be accepted without scrutiny. The law does not shield public bodies from accountability where their actions undermine public interests or contravene legal requirements. Issuing an injunction against the appellant does not inherently prevent it from fulfilling its lawful obligations, provided such obligations are exercised within the confines of the law. The Court must, therefore, inquire whether the appellant’s conduct in this matter aligns with its legal responsibilities



- and whether its opposition to the injunction is based on a legitimate exercise of its powers or an unreasonable and arbitrary rejection of public accountability for its decisions.
36. While the Court acknowledges that permanent injunctions against public bodies should be issued sparingly and with caution, it must also uphold the rule of law and protect public interests against unreasonable actions. If it is demonstrated that the appellant has acted outside its lawful mandate, or in a manner so unreasonable as to render its actions unjustifiable, as envisaged in the *Wednesbury* principle, then the issuance of a permanent injunction may be warranted. In this case, the court must weigh the competing interest of a public body, represented by the appellant, and the respondents, who seek the protection of a specific public interest, to wit, access to public infrastructure.
 37. The public infrastructure in question is a road that enables their movements and facilitates social and economic activities. This balancing exercise will guide whether an injunction serves a greater public interest or whether alternative remedies can achieve the same outcome without unnecessarily curtailing the appellant's mandate. Further, if it is necessary to invoke Section 14(1) of the Act, then there must be proper notice and fair administrative action. The respondents wrote an undated "Memorandum of Complaint" which was produced during the trial as Exhibit 5. The letter sought an explanation from the Executive Member- Transport and Infrastructure-Meru County and also expressed displeasure and concern about the closure. The letter was neither responded to nor did the appellant deny receiving it. The appellant cannot rely on the law for the proposition that they have powers to deal with the roads on behalf of the public but disregard other constitutional and statutory imperatives and the very same public.
 38. The trial court issued permanent injunctions to prevent further obstruction of the roads. The appellant argues that this order undermines its administrative mandate. Article 62 ensures public access to infrastructure on public land. The injunctions align with these constitutional provisions. We find and hold that the impugned judgment does not abridge the appellant's statutory and constitutional rights.
 39. The respondents' reliance on public roads is critical, as illustrated in their testimony and evidence. The appellant failed to substantiate the availability of alternative routes, justification for the blockage or compliance with the requirement to give adequate notice to the persons who would be affected by the blockage. The appellant also failed to respond to an inquiry by the respondents communicated in the "Memorandum of Complaint" produced during the trial as Exhibit 5.
 40. Given the above, we, therefore, find that the roads in question are public assets protected under *the Constitution* and statute as public infrastructure. The appellant's actions to obstruct these roads were unlawful, unreasonable and disproportionate. The blockage also offends the statute that governs them as shown above. A unilateral blockage of a public road is unlawful if it is done whimsically and in breach of the constitutional and legal imperatives for notice to the parties to be affected. The appellant's failure to present its alternative views by filing a defence and participating in the trial by presenting witnesses and evidence given the nature of the matter does not aid this appeal. This Court has no material that it can use to test the evidence presented by the respondents in the trial court.
 41. Public roads are essential for economic and sustainable development, as they facilitate the movement of goods and people boosting commerce and creating job opportunities. They also support access to education, healthcare, and essential services. Arbitrarily closing these roads can disrupt local economies, hinder mobility, and negatively impact communities relying on these infrastructure networks for their daily activities and economic well-being.
 42. The appellant's position in this matter is notably convoluted and inconsistent. On one hand, the appellant asserts in submissions before the trial court that there is no blockage of the public roads in



question and at the same time argues that alternative routes exist and claims that the roads' closure serves the operational needs of Miathene Sub-County Hospital. On the other hand, the Memorandum of Appeal filed in this Court contains prayers that explicitly seek to overturn injunctions restraining such blockages. It is our view that the appellant is unable to reconcile its actions with its stated arguments. It is unclear how the appellant can simultaneously deny the existence of blockages while insisting on the removal of injunctions designed to prevent or undo those very obstructions.

43. It is our finding that from a statutory and constitutional perspective, the appellant's mandate to manage public resources must be exercised in a manner that balances administrative efficiency with the rights of the community. Blocking historically recognized public roads without due process or public participation violates principles of accountability and inclusivity enshrined in Articles 10 and 62 of *the Constitution*. The trial court's findings, based on uncontested evidence from scene visits and the respondents' evidence in the trial court, underscore the critical role of these roads in providing access to homes, public services, and economic opportunities. By disregarding these findings and failing to offer credible evidence of alternative measures and complying with the law for such a process, the appellant appears to prioritize administrative convenience over statutory and constitutional obligations.
44. Furthermore, the Memorandum of Appeal raises concerns about the trial court undermining the appellant's discretion in public planning. While discretion is vital for governance, it is not absolute and must align with statutory and constitutional standards. The appellant's actions, including the unilateral closure of roads, demonstrate a disregard for Section 14 (1) of the Act, which mandates notification and justification for alterations to public infrastructure. The Court's intervention was necessitated by the appellant's failure to balance its mandate with the community's rights, emphasising that administrative convenience cannot override public interest or legal obligations. The appellant must manage public resources like roads in a way that aligns with the broader public interest, even if it involves constraints on governmental discretion.
45. Whereas the appellant has mentioned alternative roads, there was no evidence presented to support this. It is introduced in the appellant's submissions. The appellant repeatedly asserted the existence of alternative roads that could serve the respondents in place of the contested public roads passing through Miathene Sub-County Hospital. However, the appellant failed to adduce any credible evidence to demonstrate the existence or usability of these purported alternative roads. No survey map or other alternative and reliable documentation was presented to the Court to substantiate this claim. In the absence of such evidence, the appellant's contention remains speculative and unproven. The Court cannot rely on unsubstantiated assertions to resolve disputes involving public rights of way.
46. Moreover, even if the appellant had complied with the requirements of Section 14(1) of the Act and the constitutional principles of fair administrative action under Article 47, this compliance would not validate their position without evidence around which the trial court could decide. Section 14 (1) of the Act outlines the procedural steps for altering or closing public roads, including consultation and provision of suitable alternatives. However, there is no evidence before this Court to confirm that these procedural requirements were adhered to or that any viable alternative route was established. Consequently, the appellant's reliance on the alleged existence of alternative roads as a ground of appeal is legally and factually deficient.
47. Submissions are not evidence. Substantial/material deviation from the pleadings in the closing submissions cannot give rise to a remedy. In this instance, the appellant failed to even have pleadings



in the trial court. In *Daniel Toroitich Arap Moi v Mwangi Stephen Muriithi & another* [2014] eKLR, the Court held as follows:

“Submissions cannot take the place of evidence. The 1st Respondent had failed to prove his claim by evidence. What appeared in submissions could not come to his aid. Such a course only militates against the law and we are unable to countenance it. Submissions are generally parties’ ‘marketing language’, each side endeavouring to convince the Court that its case is the better one. Submissions, we reiterate, do not constitute evidence at all. Indeed, there are many cases decided without hearing submissions but based only on evidence presented.”

48. In *Bates & Ors v the Post Office Ltd (No 6: Horizon Issues)* [2019] EWHC 3408 (QB), the Court stated the difficulty and impropriety of making factual assertions in closing submissions. In this case, the appellant neither filed a Statement of Defence nor tendered any Witness Statements or evidence in the trial court. In this case, the Court stated as follows:

“Submissions should not contain evidence, or positive evidential assertions, that are not present in the evidence served in the trial. This is a fundamental point. It is not appropriate for detailed factual assertions to be made in closing submissions that are not directly referable to evidence in the case. There is no way such factual assertions can be tested; if they come in closing submissions, there is no way that the opposing party can deal with those assertions in their evidence, or even put relevant points to witnesses for the other party in cross-examination.”

49. Given the above, we uphold the trial court’s decision. The trial court did not err in granting permanent injunctions and directing the removal of obstructions. These orders are necessary to preserve public access and uphold the public’s right to use public roads unless there is a blockage that accords with the law.

50. We note that the respondents filed the case in the ELC seeking to assert their rights in rem as owners of land parcels numbers 542, 6485, 3717, 2211, 3718, 6519, 5991, 1554, 1603, 9141, 2827 and 4220 located in Mbuya/Kalimba Tigania West sub-county. The case also has a public interest component because of the nature of the use of the infrastructure at the heart of the dispute. However, we agree with the sentiment of the trial court that the matter could have been handled differently by the appellant. For this reason, we are of the view that the respondents are entitled to the costs of this appeal.

51. Accordingly, the appeal is dismissed. The appellant shall bear the costs of this appeal.

52. Orders accordingly.

DATED AND DELIVERED AT NYERI THIS 19TH DAY OF DECEMBER, 2025

W. KARANJA

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JUDGE OF APPEAL

JAMILA MOHAMMED

.....

JUDGE OF APPEAL

L. KIMARU

.....



JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

