



REPUBLIC OF KEYA
IN THE HIGH COURT OF KENYA AT MERU
CIVIL CASE NO. 3 OF 2015 (OS)

ALICE KANANA..... PLAINTIFF

VERSUS

HANNINGTON M. KINYUA M''TUERANDU.....DEFENDANT

R U L I N G

This application is dated 14th May, 2013. It seeks orders that:

1. ***This Hon. Court be pleased to certify the subject matter urgent.***
2. ***This Hon. Court be pleased to issue an order to compel respondent/defendant to open main entrance of the Applicant/Plaintiff home herein on Land Title No. NTIMA/NTAKIRA/1114 and maintain status quo and O.C.S. Meru Police Station to implement this Hon. Court order because of ignorance of law by respondent/defendant.***
3. ***This Honourable Court further do make an order restraining permanently respondent/defendant from damaging applicant/plaintiff properties i.e water pipes and bananas etc.***

It has the following grounds:

(a) Respondent is discriminating Applicant/Plaintiff by damaging her properties against humanity and violating applicant/plaintiff fundamental Right and Right of free movement into applicant/plaintiff home.

INTER- ALIA despite this Hon. Court having directed the respondent/defendant to open the afore-said entrance the respondents/defendant has fenced the entrance with poles and barbed wire or/and chain link.

(b) The Respondent/Defendant is causing the Applicant to suffer irreparable loss and damages.

(c)The respondent/defendant is causing a school going child to suffer loss and damages of failing to attend school by closing the applicant/plaintiff main entrance for more than one month up to date.

WHICH application is supported by sworn affidavit of Alice Kanana of Meru with the nature of the case.

P.O. Box 68

Evidence that the defendant had been properly served was proffered. He did not come to court.

The applicant told the court that the defendant had dismissively told her that he did not recognize court orders issued on 15.4.2015. She also told the court that the defendant told her that his lawyer, Mwenda Mwarania knew all routes around the court. I doubt that an advocate, an officer of this court, would encourage disobedience of court orders.

I inquired as to why she had not sought the orders she is seeking in this application in her original application dated 22nd January, 2015. She told the court that her pleadings are drafted for her by a man called John Gitije Gikutha whom she described as an architect conducting his trade in Meru Town. The Meru Bar Association may wish to take an interest in this development.

It is clear that the defendant has intentionally refused to oppose this application. I grant the following orders and also issue notification in terms of Section 29 of the Environment and Land Court Act .

1. ***Prayer 2 in the application is granted and more specifically the OCS Meru Police Station Superintends the opening of the main entrance to the Applicant's home forthwith.***
2. ***The order issued on 15th April, 2015, restraining the defendant/respondent from dismantling or/and demolishing the plaintiff's/applicant's houses until this suit is heard and determined remains.***
3. ***Costs are awarded to the plaintiff/applicant.***
4. ***In terms of Section 29 of the Environment Land Court Act, should the defendant refuse, fail or neglect to obey the orders given by this court, he will be committing an offence and will be liable to a fine not exceeding twenty million shillings or to imprisonment for a term not exceeding two years or to both.***

Delivered in Open court at Meru this 20th day of May, 2015 in the presence of:

Cc. Lilian

Alice Kanana – Applicant

P. M. NJOROGE

JUDGE