



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT KERUGOYA**

**ELC CASE NO. 11 OF 2014**

JOEL KIRAGU KARIGI .....1<sup>ST</sup> PLAINTIFF

BERNARD KARIMI GACHARIA.....2<sup>ND</sup> PLAINTIFF

JOSEPH NGACHA KARIGI.....3<sup>RD</sup> PLAINTIFF

VERSUS

ESTHER NJIRAINI .....1<sup>ST</sup> DEFENDANT

FELISTER WANJIKU .....2<sup>ND</sup> DEFENDANT

MURIA-IGIRI NDUIGA .....3<sup>RD</sup> DEFENDANT

MUNGUTI NJAU KARAGA.....4<sup>TH</sup> DEFENDANT

JOHN CHARIBU .....5<sup>TH</sup> DEFENDANT

JUDY KAGIO .....6<sup>TH</sup> DEFENDANT

LILIAN NYAGUTHII.....7<sup>TH</sup> DEFENDANT

MITHAMO GATERU .....8<sup>TH</sup> DEFENDANT

ANN WAMBUI .....9<sup>TH</sup> DEFENDANT

GICIMU KANJI .....10<sup>TH</sup> DEFENDANT

**JUDGMENT**

The three plaintiffs herein namely JOEL KIRAGU KARIGI (1<sup>st</sup>

plaintiff), BERNARD KARIMI GACHARIA (2<sup>nd</sup> plaintiff) and JOSEPH NGACHA KARIGI (3<sup>rd</sup> plaintiff) are the registered proprietors of the parcels of land known as MUTIRA/KANYEI/1143, 1144 and 1145 respectively.

By a plaint filed in this Court on 24<sup>th</sup> January 2014, the said three plaintiffs pleaded that the defendants herein have without any colour or right built structures on the road leading to their properties hence

blocking the plaintiffs right of way hence giving rise to this suit in which the plaintiffs seek orders that:-

- a. ***The defendants be ordered to remove their structures to pave way for the plaintiffs to use the main road and in default they be forcefully evicted.***
- b. ***Costs of the suit.***
- c. ***Any other relief the Court deems fit to grant.***

The record herein shows that all the ten (10) defendants were served with the plaint and summons to enter appearance on 14<sup>th</sup> February 2014 at Kiamuthambi Village but neither of them entered appearance nor filed any defence. Consequently, on 25<sup>th</sup> March 2015, interlocutory judgment was entered against them and the matter came up for formal proof on 7<sup>th</sup> October 2015 when again the plaintiffs served the defendants with a formal hearing notice.

JOSEPH NGACHA KARIGI the 3<sup>rd</sup> plaintiff testified on behalf of the other plaintiffs who adopted his evidence. That evidence is that the 1<sup>st</sup> plaintiff is the registered owner of the property known as MUTIRA/KANYEI/1143 while the 2<sup>nd</sup> plaintiff is the registered owner of the property known as MUTIRA/KANYEI/1144 and the 3<sup>rd</sup> plaintiff the registered owner of the property known as MUTIRA/KANYEI/1145. Certificates of search in respect of the said properties were produced and marked as Plaintiffs Exhibit 1, 2 and 3. The plaintiffs' evidence was that a local councilor, in the process of soliciting for votes, allowed the defendants to put up structures on the road leading to their respective properties thus leading to this suit. He produced a map (Plaintiffs, Exhibit 4) showing where the structures have been put up.

The plaintiffs' evidence was not rebutted as no defence was filed and neither of the defendants appeared in Court for the formal proof even when duly served. It is not in dispute that the plaintiffs are the registered proprietors of the parcels of land known as MUTIRA/KANYEI/1143, 1144 and 1145 and as such, they are entitled to all the rights and privileges belonging or appurtenant thereto. Such rights and privileges are protected by **Section 27 and 28 of the repealed Registered Land Act** (under which the titles were issued) and even under **Section 25 of the new Land Registration Act**. Such rights cannot be enjoined if access to the properties is unlawfully restricted by other persons. In order therefore to allow the plaintiffs their rights to their respective parcels of land and in the absence of any lawful explanation as to why the defendants are obstructing the plaintiff's access to their properties, it is only proper that this Court grants the plaintiffs the orders sought in their plaint.

Therefore, on the plaintiffs' un-rebutted evidence before me and which I believe, I am satisfied that they have proved their case against the defendants and I enter judgment for them as follows:-

- a. ***An order that the defendants do remove the structures put up on the road leading to the plaintiffs properties within 60 days of the decree herein being served upon them.***
- b. ***In default, the plaintiffs shall be at liberty to evict the defendants and remove the structures.***
- c. ***No order as to costs.***

**B.N. OLAO**

**JUDGE**

**27<sup>TH</sup> OCTOBER, 2015**

27/10/2015

Before

B.N. Olao – Judge

Gichia – CC

Plaintiffs – present

Defendants – absent

COURT: Judgment delivered this 27<sup>th</sup> day of October, 2015 in open Court.

Plaintiffs present

Defendants absent.

**B.N. OLAO**

**JUDGE**

**27<sup>TH</sup> OCTOBER, 2015**