

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KITALE

CIVIL SUIT NO. 18 OF 2010

FRANCIS SIMIYU MUKHOLOSI..... PLAINTIFF

VERSUS

JOHN KHAEMBA DEFENDANT

J U D G M E N T

The Plaintiff Francis Simiyu Mukholosi sued the Defendant John Khaemba for a mandatory injunction compelling him to open an access road leading to the Plaintiff's parcel of land known as LR No. Kapkoi Sisal 276. The hearing date was taken by consent but the Defendant did not appear during the hearing.

The Plaintiff testified that he is the registered owner of LR No. Waitaluk/Kapkoi Block 10/Kapkoi Sisal/276. The Defendant owns Plot No. LR Waitaluk/Kapkoi Block 10/Kapkoi Sisal/280. There is an access road in between the Plaintiff and the Defendant's plots. The Defendant has however blocked the road by constructing a pit latrine on it leaving the Plaintiff with no access to his land. The Plaintiff went to the Area Chief and complained over the blocked road. The Chief referred him to the Land Registrar who issued a notice to the affected parties. The Registrar visited the site and confirmed that there is a road of access which has been blocked. He advised the Plaintiff to move to Court for an order compelling the Defendant to open the road of access.

I have considered the evidence adduced by the Plaintiff. He is the registered owner of Plot No. Waitaluk/Kapkoi Block 10/Kapkoi Sisal/276. The Defendant in his statement of defence admitted that he is the owner of Plot No. LR Waitaluk/Kapkoi Block 10/Kapkoi Sisal/280. The Plaintiff produced the area map (*exhibit 4*) which shows there is a road of access in between his land and that of the Defendant. He highlighted the blocked section in yellow on the map. The Plaintiff also produced the decision of the Land Registrar who visited the scene and gave the affected parties opportunity to state their respective cases. The Registrar's report is (*exhibit 3*). The Registrar found that there is indeed a road of access and recommended that since the Defendant was not willing to open the access road, an order of the Court to compel him to do so was necessary. The Plaintiff also produced a notice issued by the Registrar (*exhibit 2*) informing all affected parties to be present during his visit.

The map which was produced shows that the Plaintiff has no other access road to his land except the blocked one. There is no reason why the Defendant should not open up the access road. I find that the Plaintiff has proved his case on a balance of probabilities. An order is hereby issued compelling the Defendant to open the access road leading to the Plaintiff's land known as Waitaluk/Kapkoi Block 10/Kapkoi Sisal/276. The Plaintiff shall have costs of the suit.

Dated, signed and delivered in Open Court on this 27th day of June, 2013.

E. OBAGA

JUDGE

In the presence of Mr. Bungei for Plaintiff.

Court Clerk: Joan.

E. OBAGA

JUDGE

27/06/2013