



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU

Civil Appeal 262 of 2009

STANLEY MWANGI WAMAE.....APPELLANT

VERSUS

CHARLES NGATIA KAMAU.....1ST RESPONDENT

JOHN MUCHANGI NJOROGE.....2ND RESPONDENT

CHARLES KAMAU NYAGA.....3RD RESPONDENT

RULING

This is an application under **Order 41 Rule 4(6)** of the **Civil Procedure Rules** for a temporary injunction pending appeal. It is based on the ground that the appellant being the registered proprietor of the suit land, his appeal has overwhelming chances of success and that unless the injunction sought is granted the suit property will be wasted or even alienated thus rendering the appeal nugatory.

In the affidavit in support of the application, in addition to adumbrating the above grounds, the appellant deposed that though the learned trial magistrate found that there is no road of access through the appellant's land, he dismissed his application and the entire suit (Nyahururu PMCC No.297 of 2009) on the ground that he had no jurisdiction to entertain it. If the injunction sought is not granted, the respondents will create a public road through his land which will be difficult to seal if the appeal is allowed as the members of the public will have been used to it.

Opposing the application, John Muchangi Njoroge, the 2nd respondent, deposed in his replying affidavit that this application is bad in law; that the appellant is guilty of laches having done nothing to close the public road which has existed on the disputed piece of land since 1967; that there is nothing to stay as the application has been overtaken by events; that immediately after the appellant's suit was dismissed the community laid down water pipes through the disputed piece of land; that the appellant will not suffer any prejudice as the respondents will remove the water pipes if the appeal is dismissed and that appeals take long to be determined hence if the injunction sought is granted it will cause great prejudice to the community.

In the supplementary affidavit of Charles Ngatia Kamau, the 2nd respondent it is admitted that though on the ground there is a public road between Plot Nos. 400 and 401 the same is not reflected on the Registry Index Map (RIM) for the area.

Counsel for the parties submitted on these averments.

As this is an interlocutory application, I do not wish and I am at any rate not supposed to make any definitive findings on the matter at this stage lest I prejudice the hearing of the appeal. However, having considered the matter, I find that the appellant has made out a prima facie case with a probability of success. I therefore grant a temporary injunction but not as sought. I order that pending the hearing and final

determination of this appeal, the respondents by themselves, their servants and/or agents are hereby restrained from entering the disputed piece of land, passing over it or doing anything on it. If the respondents or the community has indeed laid water pipes across the disputed piece of land as claimed, I order that the same be left intact until this appeal is heard and determined. That means that the appellant should not uproot or in anyway interfere with those water pipes until this appeal is heard and determined.

The costs of this application shall be costs in the appeal.

DATED and DELIVERED this 31st day of March, 2010.

**D. K MARAGA
JUDGE.**