

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

Civil Appeal 14 of 2009

**TOM LABAN KEYA 1ST APPELLANT
BRIGID MALEYA 2ND APPELLANT**

V E R S U S

CHRISTINE ONGAYO RESPONDENT

R U L I N G

In her application dated 25th September, 2009, the applicant, Christine Ongayo is seeking orders that the respondent be compelled to open the access road leading to her plot No. **BUTSOTSO/SHIKOTI/7293** pending the hearing and determination of the appeal. The application is supported by her affidavit sworn on 25th September, 2009.

The applicant's contention is that the access road leads to her plot where she has built a nursery school and students and teachers use the road. The respondents closed the road without informing her and they have fenced off the road. The appeal Tribunal held in her favour and the respondents appealed.

Mr. Kiveu for the respondents opposed the application. Counsel submitted that the appeals Tribunal did not deliberate on the issue of access road. There is another access road to the applicant's property. The respondents filed an application on 12th October, 2009 seeking to vacate the interim orders granted on 1st October, 2009.

The applicant states that she operates a school by the name **SELINE ACADEMY** and that the access road was there before it was closed. From the proceedings of the Western Provincial Land Disputes Appeal Tribunal, the verdict was that the surveyors do re-survey and determine the correct measurements of parcels Nos. BUTSOTSO/SHIKOTI/7292, 7293, 2954 and 5712. The applicant contends that before that was done the respondents appealed and fenced off the access road.

I do find that the applicant has established a proper claim against the respondent. Her allegation that there was an access road before it was fenced off sounds believable. This is not a creation of a new road but the right to use an existing road. The best way to solve the problem is for the District Surveyor to carry out proper surveys and demarcate the access roads.

In the circumstances, the applicant's application dated 25th September, 2009 is granted as prayed. Costs shall be in the cause.

Delivered, dated and counter signed at Kakamega this 16th day of March, 2010

SAID J. CHITEMBWE

J U D G E