



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MACHAKOS

Misc. Appli. 80 of 2009

- 1. MORGAN MUNYWOKI SII**
- 2. MBATHA MUEKE**
- 3. FLORENCE KAGUNDA**
- 4. MULE MUEKE.....APPLICANTS**

VERSUS

- DISTRICT LAND ADJUDICATION OFFICER,**
- KIBWEZI DISTRICT.....1ST RESPONDENT**
- THE ATTORNEY GENERAL.....2ND RESPONDENT**

AND

JOSEPH MULIINTERESTED PARTY

RULING

1. The Application before me is for leave to institute the judicial review orders of prohibition to prohibit the 1st Respondent from “*expounding on road construction encroaching on the Applicant’s parcels of land Plot Numbers 718, 716, 720 & 721 Nguu Ranch Settlement Scheme in Makueni District*” The same is premised on Order LIII Rule 1(2) of the Civil Procedure Rules and should leave be granted, it is prayed that the same should operate as a stay of the order of implementation of the extension of the road.

2. I have read the Statement of Facts and the Verifying Affidavits and the Applicants’ case is that sometime in 1995, they were offered plots of land in Nguu Settlement Scheme by the Director of Land Adjudication and Settlement and one of the conditions of offer was that “*the Settlement Fund Trustees during the period from the date hereof to the date of execution of transfer of the land*” shall have inter-alia the right to “*provide such ways of access as may be necessary for and ... access thereto to rivers by persons and cattle from adjoining and neighbouring pieces of land.*” Transfer is defined in the letter of offer to include grant of title. From all that has been exhibited to the Verifying Affidavit, no transfer was effected to the Applicants although the process towards that position has been embarked on by payment of requisite deposits and conveyance fees.

3. The complaint by the Applicants is that on 5.8.2008, the 1st Respondent wrote to them and intimated that he would visit the land on 20.8.2008 and “*re-open the road of access between [their] plots.*” They are unhappy with that decision because the same would mean encroachment into their land parcels without compensation.

4. My view is straight forward; the Application is misguided because by accepting the offer to take up the plots, the Applicants were expected to allow the Settlement Land Trustees through the Director of Land Adjudication and Settlement to have access to the land and it is commonly accepted that the Applicants until their titles are granted would allow the offeror to demarcate the land including creating roads of access and to stop him from doing so would be both unlawful and impractical as chaos and disorder would otherwise ensue. Surely, it is the duty of the 1st Respondent to ensure orderly access to all neighbouring plots and when some parties, close off access roads infighting and anarchy would be created.

5. The Application before me is wholly misguided, is incompetent and is dismissed with no order as to costs.

6. Orders accordingly.

Dated and delivered at **Machakos** this **22nd** day of **April 2009**.

Isaac Lenaola

Judge

In the presence of: Mr. Kimeu for Applicant.

Isaac Lenaola

Judge