



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KERICHO
CIVIL SUIT 21 OF 2008

KIPKIRUI ARAP KOSKE PLAINTIFF

VERSUS

1. PHILEMON KIPSIGEI TANGUS}

2. BOMET DISTRICT LAND REGISTRAR} DEFENDANTS

JUDGMENT

I: Background

1. A dispute arose in this land matter concerning a public access road that ran through a land parcel owned by the 1st defendant Philemon Kipsigei Tangus.
2. The plaintiff Kipkirui Arap Koske is the registered land owner of Kericho/Kipsonoi S.S. /117. This land borders a river adjacent to that land is land parcel Kericho/Kipsonoi S.S/508 which does not border the river but a road of access through that said land was provided to the Plaintiff property.
3. Because the 1st defendant was not able to access the river when he sought this permission for the plaintiff who refused to give it to him he blocked the public access for the plaintiff that went through his land.
4. Since 1986 to 2005 the map to their two adjacent property was altered. According to the plaintiff, this was possible as the 1st defendant was originally a surveyor working with the Lands Department. He colluded with the 2nd defendant to change this property.
5. The Plaintiff on discovering this was on 24th may, 2006 heard, with the Lands Disputes Tribunal Bomet Central Division. He then filed this suit on 21st May, 2008 seeking relief that the public access road be opened as ruled by the tribunal.

II: Procedure

6. Defendant 1 and 2 failed to enter appearance nor file defence. Interlocutory judgment should not have been entered by the deputy registrar as this matter was neither a contract or TORT case. This court

accordingly set the orders of 9.9.08 aside on the day of hearing of 17th March, 2009.

7. The hearing proceeded under **order 1XA r 8** Civil Procedure Rules as read with **order 1XB** Civil Procedure Rules.

III: Findings

8. I find that the Plaintiff who appeared to Court is a truthfully witness. The evidence provided by him showed that since 1964 when the settlement scheme was established there has always been an access road going through the 1st defendants land.

9. The fraud used to erase the map was established by witnesses in the tribunal who claim that there always had been the access road to the public on the property.

10. The tribunal proceedings are adopted by this court under **Section 34** of the **Evidence Act**.

11. I accordingly find and do enter judgment for the plaintiff. That the access road be accordingly opened. The order that the registrar map be cancelled where altered and replace the original road passing through the 1st defendant land back on the map.

12. The plaintiff access road be opened.

13. I order that these proceedings be placed before the 1st and 2nd defendant employer, the Permanent Secretary Ministry of Lands for further investigation and action on the issue of fraud.

14. I award costs to the plaintiff to be paid by the 1st and 2nd defendant.

DATED this 19th day of May, 2009 at **KERICHO**

M.A. ANG'AWA

JUDGE

Advocate

W.R. Ngetich advocate from the firm of M/S W.K. Ngetich & Co. advocates for the Plaintiff – present

N/A for the defendant