



REPUBLIC OF KENYA
HIGH COURT OF KENYA AT KISII
Civil Appeal 31 OF 2007

CHAIRMAN, BOARD OF GOVERNOR)

GETIENGO PRIMARY SCHOOL) APPELLANTS

GICHANA ANGWENYI)

VERSUS

FRANCIS OBONYO ANGWENYI RESPONDENT

RULING

By an application brought under **Order XL1 rule 4 (6)** of the Civil Procedure Rules and **Sections 3A and 63 (e)** of the Civil Procedure Act, the applicants prayed for an order of a temporary injunction to restrain the respondent, by himself, agents and/or servants from blocking, hindering or limiting the common access road leading to the applicants' properties known as L.R.NOS. WEST KITUTU/MWAMONARI/400 & 1552 (hereinafter referred to as "**the suit properties**"), pending hearing and determination of an appeal that had been filed by the applicants.

The appeal emanated from a ruling delivered in Kisii CMCC NO.11 OF 2007 where the learned trial magistrate held that the encroachment and/or blockage of a public road of access amounted to a boundary dispute and was therefore within the jurisdiction of the Land Disputes Tribunal.

The application was supported by an affidavit sworn by Charles Gichana Angwenyi.

The Order of injunction had been sought in the aforesaid suit before the subordinate court. The court struck out the suit for want of jurisdiction saying that the claim was a boundary dispute in terms of the provisions of the Land Disputes Tribunal Act.

Prior to the filing of the Kisii CMCC.NO. 11 of 2007, the respondent had blocked the common access road leading to the suit properties. As a result the first applicant cannot transport building materials into the school compound and the second applicant cannot access his homestead by his motor vehicle. The applicants annexed to their affidavit a report by the District Land Registrar, Kisii/Gucha Districts and the District Surveyor. The reports clearly showed that the

road leading to the suit properties had been partially blocked by an artificial ridge created with stones, soil and some sisal plantations.

This court had on 16th October, 2007 granted interim orders as prayed by the applicants pending hearing of the said application on 29th October, 2007. Come the aforesaid hearing date, the respondent's

advocate sought leave to withdraw grounds of opposition which he had filed on 15th October, 2007 and further leave to file a replying affidavit.

The court granted leave as sought and ordered that a replying affidavit be filed and served within 14 days from the 29th day of October, 2007. The interim orders were extended upto 10th March, 2008 when the application was to be heard.

On 10th March, 2008 the respondent's advocate told the court that he had not filed a replying affidavit and sought a further adjournment. The applicant's advocate opposed the application for adjournment. When the court declined to grant any further adjournment, Mr. Oguttu for the applicants argued his clients' application for an injunction.

Mr. Minda for the respondent, having filed neither a replying affidavit nor grounds of opposition could only oppose the application on points of law but he said he had none to raise. That in effect meant that the applicants' application was unopposed.

I have carefully considered the application and in particular the two reports aforesaid. I am satisfied that the respondent had interfered with the access road to the suit properties. He had to be stopped by an order of this court. There is well found fear on the part of the applicants that he will block the entire common access road before the appeal is heard unless he is restrained from so doing by an order of this court. In the circumstances, I grant the orders as sought by the applicants. The respondent shall bear the costs of this application.

DATED, SIGNED and DELIVERED at Kisii this 3rd Day of April 2008.

D. MUSINGA

JUDGE.

In the presence of:

Mr. Oguttu for the applicants.

N/A for the respondent.

D. MUSINGA

JUDGE