



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)**

Civil Case 269 of 1991

1. Land and Environmental Law Division
2. Subject of main suit: Land/road access: LR/Kilifi/Chembe/Kibabamshe/414 and 313
3. Application 17.12.04 – Injunction

To restrain defendants from closing a road,
access to plaintiffs property.

4. In reply: There is a decree. No mandatory injunction can be granted.

Road not public

There are grounds to permit access to road.

5. Held:-

1. Suit settled on 12.5.93 by way of consent and decree issued.
2. Injunction prayed for in application of 17.12.04 filed in a suit that is functus officio
3. Application dismissed.

6. Case law – nil

7. Advocates:

S.K. Ritho for S.K. Ritho & Co. Advocates for the plaintiff – present

Katwa for Katwa & Kemboi holding brief for Kiarie Kariuki & Co. Advocates for the defendant - present

SAMUEL KANOGO RITHOPLAINTIFF

VERSUS

MAYUNGU LIMITEDDEFENDANT

RULING

I: Background of application 17.12.04 for orders of injunction

1. The plaintiff, an advocate of the High Court of Kenya and proprietor of Land parcel LR. Kilifi/Chembe/Kibabamshe/414 situated along a beach area in the North Coast rented the said premises to persons to run as a restaurant. Adjacent to this land is land Parcel LR Kilifi/Chembe/Kibabamshe/313 belonging to the defendant Mayungu Limited whose proprietor is an Italian National.

2. In order to access the plaintiff said property access could only be through the defendants property. The area being undeveloped. In 1991, the plaintiffs obtained injunction order (Abdullah J 18.5.95) whereby the defendant was restrained from building a gate and blocking the access road.

3. On the 11.5.93 the parties wrote an official letter of consent to the deputy registrar settling this matter. This consent was elaborate with the effect that the injunction orders be lifted but that there be a right of way of the plaintiffs through the defendants property. The right of way so granted and agreed to was to be registered in the Kilifi land registry as a permanent easement over Chembe/Kibabamshe/313 in favour of the plaintiffs parcel of land known as chembe/Kibabamshe/414.

4. The case in effect, together with the counter claim was marked as settled.

II: Application 17 December 2004

5. Thirteen years later the applicant/plaintiff files this application of 17.12.04 seeking an injunction restraining the defendant from building a gate and evicting a barrier to the suit premises. These orders were granted. The gate and wall were I believe demolished.

6. The purpose of the hearing before court was to confirm the temporary injunction given (Kariuki J.3.12.05). The advocate for the defendant opposed this application on the grounds that the suit had already been settled and a decree issued. The plaintiff can therefore not seek an injunction in this suit. Further, the defendant set up a barrier but access by the plaintiff that was available and never denied

III: Finding

7. It is indeed correct to note that this suit had been compromised and settled. There was nothing left.

8. Where there has been contravention of the said order an appropriate application should have been filed but not an application for a mandatory injunction.

9. I decline to confirm the temporary injunction and dismiss the same with costs to the respondent/defendant.

Dated this 27th day of July 2007 at Nairobi.

M.A. Ang'awa

Judge

S.K. Ritho for S.K. Ritho & Co. Advocates for the plaintiff – present

Katwa for Katwa & Kemboi holding brief for Kiarie Kariuki & Co. Advocates for the defendant - present