

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYERI

CIVIL CASE 32 OF 2004

FRANCIS MWANGI KARURI.....PLAINTIFF

Versus

EUNICE MUMBI GACHANJA

REBECCA WANJUGU GACHANJA.....DEFENDANTS

JULIANA NJERI GACHANJA

RULING

In this Chamber Summons dated 16th April, 2004, the Applicant wants an injunction against the three Respondents to restrain them from interfering or blocking in any manner the road of access leading to the Applicant's parcel of land No. NYERI/WARAZA/33 till the determination of this suit. That parcel of land is registered under the Registered Land Act the date of the first registration in that registration section being 19th September 1974. From the time of that first registration to-date no Registry Index Map Sheet number 3, the most relevant map sheet, has ever shown the road of access in question and indeed when the District Land Registrar, the custodian of the official Government Land registration records under the Registered Land Act in the District, visited the area to settle the dispute and after hearing evidence and carrying out investigation on the ground using the Registry Index Map, reached the decision that the road of access in question was not officially and lawfully in existence.

But he seems to have been doing that after the Applicant had properly prepared himself and was subsequently able to flash around letters and maps from higher places, letters and maps which the poor District Land Registrar is still being expected to follow, authors of those letters and printers of the maps using high sounding words including a declaration that: "the Registry Index Map is not an authority in determining boundary disputes." See the Applicants annexure number TMK7. A genuine question: If "the Registry Index Map is not an authority in determining boundary disputes," what or where is the authority? Those high officials in the then Ministry for Lands and Settlement, now Ministry for Lands and Housing, must be re-writing the Registered Land Act to remove the effect of Sections like 18 to 24 inclusive to replace them with repealed sections of the Chief's Authority Act. Perhaps it is not realized that to a cartographer in the Director of Surveys Office, to change the contents of a map is as easy as the changing of the contents and meaning of a news item is to a trained journalist, and Anyone looking at the new product will always see it as if it was the one in existence originally.

The truth is that in law, the Registry Index Map is an authority in determining a dispute over boundary. While the one prepared under Section 22 of the Registered Land Act is an authority in determining a dispute over a fixed boundary, the Ordinary Registry Index Map is an authority in determining a dispute over an approximate boundary like the one in the present suit. Having said the above, I do remind myself that I am not writing the judgment in this suit. I am only writing a ruling in an interlocutory application and may therefore be saying too much at the moment. Let me stop at that and proceed to conclude that circumstances of this case are such that it is inappropriate to grant the injunction prayed for in this Chamber Summons before the main suit is heard and evidence adduced, tested, canvassed, evaluated and the suit determined. The Applicant is not a prisoner in his parcel of land. He has an alternative road of access, which has nothing to do with parcels of land owned by Respondents from parcel No. NYERI/WARAZA/30 and may therefore continue using that alternative road of access if the one in

dispute is not yet available for his use on the ground that this suit is yet to be determined. He has not shown he will suffer irreparable loss and even on the balance of convenience there should be no injunction as prayed at this stage. Accordingly, Chamber Summons dated 16th April 2004 herein be and is hereby dismissed with costs to the Respondents.

Dated this 2nd day of June 2005.

J. M. KHAMONI

JUDGE