

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MACHAKOS
CIVIL CASE NO. 57 OF 2001

JOYCE MUILULU KILONZO ::::::::::::::::::::::::::::::::::: PLAINTIFF
VERSUS
COUNTY COUNCIL OF MACHAKOS ::::::::::::::::::::::::::::::::::: DEFENDANT

Coram: J. W. Mwera J.
Mrs. Nzei Advocate for Applicant/Plaintiff
Muoki Advocate for Respondent/Respondent
C.C. Muli

R U L I N G

By the application dated 4.4.2001 brought under O.39 rr.1, 2, 2A, 3 Civil Procedure Rules the plaintiff wished that the defendant council be restrained from encroaching onto her two parcels of land No. MKS MUNICIPALITY/BLOCK 1/188 and MACHAKOS TOWN/BLOCK 1/187, the two properties she occupies on leasehold. Title documents were shown in court when Mrs. Nzei informed it that for no reason at all the defendant's agents had pulled down a fence round the said properties and were contemplating causing damage to the buildings thereon.

Mr. Muoki even with admitting that a fence was pulled down, told the court that the plaintiff put up this fence but on the land that belongs to the defendant council and intended for the use and benefit of the public. That the defendant was justified to pull it down so that the plaintiff does not use the fence now and later claim a portion of land that was not part of her own. That the defendant was not going beyond pulling down the fence.

It was not readily noted from the certificate of lease for land No. 1/188 regarding its acreage, but the defendant is therein named as the lessor.

As for land No.1/187 also leased from the defendant council it measures 0.0186 Ha. If the defendant is the lessor of both parcels, unless they constitute the 10 whole land owned by it in the area in issue, it may as well be presumed that the defendant council has land that abuts the plaintiff's (with others in No.1/188) properties. Mr. Muoki told the court that the only act complained of by the plaintiff stopped at pulling down the fence. May that remain so. No more acts to be complained of until this suit is heard or further orders of the court.

However it looks like the parties are tussling over a boundary. In this court's view with exact measurements of the properties involved, a surveyor should be able to sort out the dispute without further ado. This is by the way, though.

Orders accordingly.

Delivered on 4th July 2001.

J. W. MWERA

JUDGE