

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL CASE NO.1540 OF 1999

NGUGI KINYANJUI KIURU & ANOTHER PLAINTIFF

VERSUS

NG'ANG'A KIURU DEFENDANT

R U L I N G

This application by way of chamber summons seeks orders of injunction to restrain the 1st respondent/defendant by himself, his servants and/or agents from interfering with the Plaintiff user of access path on **NDARAGU.GACHAGARE/16** pending hearing and determination of the suit herein.

The applicants are sons of the deceased brother of the 1st defendant. Their lands are adjacent to each other, and the applicants had a path of access across the 1st defendant's land to their home which they have been using since 1950.

The same was reflected on the official survey map.

Sometimes in 1990 the said path of access was rerouted to pass along the boundary. The same is again reflected in the official survey map. Counsel for the respondent/ 1st defendant opposes the application and submits that the path of access was not closed but rerouted and same was done officially by the Government. The rerouting was effected both on the map and on the surface way back in 1990 and the applicants/Plaintiffs have been using the rerouted path of access since then.

The previous path of access was closed and rerouted in 1990 and has been in use for over 10 years now.

No case has been made by the Plaintiff to warrant an order of injunction. The order sought has already been overtaken by events.

For the reasons stated above this application fails and the same is dismissed with costs.

Dated and Delivered at Nairobi this 29th day of February, 2000

J.L.A. OSIEMO

JUDGE

