



## Easement

**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA AT NAIROBI  
CIVIL CASE NO.1572 OF 1999**

***PETER NDIRANGU KINUTHIA ..... PLAINTIFF***

***VERSUS***

***MARY KARANJA ..... DEFENDANT***

### **JUDGEMENT**

I heard the full trial of this suit on the 4th of October, 2000. The trial was finalised by me. The defendant requested that the judgement of this case be not delivered until the 20th of November 2000, when she would have completed her other cases.

It was then that it transpired that there has been a long on going disputes over land between the plaintiff and defendants. As far as I could gather these whole proceedings began with a succession cause. The defendant inherited land through succession cause 1735/95. I have not had sight of this case. It seems the land was sub-divided and the plaintiff obtained a portion. There are three parcel of land known as

- I) Muguga/Gitaru 803
- ii) Muguga/Gitaru 804
- iii) Muguga Gitaru 805

The Government compulsorily acquired the land and the effect was that land Muguga/Gitaru/803 no longer existed. It was to be used for a major road Highway. This left Muguga Gitaru/804 owned by the plaintiff and Muguga Gitaru/805 owed by the defendant.

The plaintiffs case is that Muguga/Gitaru 803 no longer exists. It is now a steep hill. He is unable to get access to the main road. He requires to access over the defendants land and as such reach the main road through her land. What infact want is an easement and access over the said land.

The defendants who acts in person has stated that the plaintiff was adequately compensated by the Government of the said land. He should have gone elsewhere and bought the land. Instead he infact has remained on the land as a trespasser.

The issue therefore before the court was whether there exists plot Muguga/Gitaru/804 and if the plaintiff is the rightful owner.

Secondly, whether, if it exists, the plaintiff has access to the said plot Muguga Gitaru 804 through defendants land Muguga Gitaru 805?

I am aware that there exists in the subordinate courts at Kikuyu case No.1241/99 in which the plaintiff has been charged with trespass. I do not nonetheless have sight of the said proceedings.

(I am aware there are orders given on 28.10.98 by the Hon. Justice Amin J praying that the plaintiff be evicted from the said land. I am aware that there is a succession cause 1735/95 whereby the plaintiff sort for orders of revocation. He appealed to the court of appeal in C.A.240/97. That the said appeal was dismissed. I am now informed that there another C.A. case filed by the plaintiff known as No.145/99. In all these above case I do not have the proceeding. In some cases the orders have been availed to this court)

From the evidence before this court the plaintiff produced the plans of the survey showing that 30% of the land Muguga/Gitaru/804 claimed by the plaintiff had been compulsorily acquired for the construction of a highway.

This means that the said parcel of land in principle should not have a direct access to the highway.

The plaintiff did not disclose to this court if he had been compensated by way of 30% or 100% for the parcel of land. As I have no information on this the land Muguga/Gitaru/804 if, compensation is at 100% the lands, should belong to the government (I do not have evidence of the extent of such compensation). If it is 30% compensation the land remaining should belong to the plaintiff.

The plaintiff has produced his title deed (1994) it should have been surrendered in order to be given another which would be in the same proportion as that retained. I am in fact only speculating due to lack of evidence.

I have looked at the surveyors report and I do note that there is land parcel 142, 437 which could also give access to the said main road.

I would recommend this as there has been such a strong contention between parties.

I would dismiss the plaintiffs case. I do so in the light of the foregoing and in the light of Hon. Justice Amin's ruling in Succession case 1735/95 dismissing a similar prayer to this suit where he too held that the plaintiff was a mere trespasser.

Dated this 20th day of November 2000 at Nairobi.

**M.A. ANG'AWA**

**JUDGE**