



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KERICHO**

**ELC CASE NO. 55 OF 2015**

**SIMON TESOT KIPKIRUI.....PLAINTIFF**

**VERSUS**

**SARAH ROTICH.....DEFENDANT**

**JUDGMENT**

**INTRODUCTION**

1. By a Plaint dated 27<sup>th</sup> July 2016, the Plaintiff instituted this suit against the defendant seeking the following reliefs:

- a) A declaration that the Plaintiff who is the registered owner of land parcel no. KERICHO/KIPKELION/BARSIELE BLOCK 2 (KAPLABA) / 136 has a right of access to a public road which is adjacent to the defendant's land parcel no. KERICHO/KIPKELION/BARSIELE (KAPLABA)/138 as established in the amended Registry Index Map.
- b) A permanent injunction restraining the defendant from interfering with the Plaintiff's right to access the public road adjacent to the defendant's land parcel no. KERICHO/KIPKELION/BARSIELE (KAPLABA)/138
- c) Costs and interest.

2. In his statement of defence dated 23<sup>rd</sup> September 2016 the defendant denies the plaintiff's claim.

The suit was set down for hearing and both parties testified and called their witnesses.

**PLAINTIFF'S CASE.**

3. The plaintiff 's case is that he is the registered owner of land parcel number KERICHO/KIPKELION/BARSIELE BLOCK 2 (KAPLABA) / 136 measuring 4.8 hectares. The plaintiff's land is adjacent to the defendant's parcel of land known as KERICHO/KIPKELION/BARSIELE (KAPLABA)/138. The plaintiff testified that the defendant has blocked the plaintiff's access to the main road through the designated public road provided for in the Registry Index Map road. The said road is between the defendant's land and land parcel no. KERICHO/KIPKELION/BARSIELE BLOCK 2 (KAPLABA)/202. Instead, the defendant created a road between the plaintiff's land and land parcel no. 195 which is illegal and inaccessible. The plaintiff referred the matter to the District Surveyor who tried to open up the designated access road but the defendant resisted and stopped the surveyor from doing his work. The plaintiff then obtained a court order dated 28<sup>th</sup> October 2016 directing the District Surveyor to open up the public road and restraining the defendant from stopping the Surveyor from carrying out the exercise of opening the road. The District Surveyor subsequently implemented the court order.

4. The plaintiff called the District Surveyor as PW2. He confirmed that he had opened up the road which was provided for in the Registry Index Map in accordance with the court order.

**DEFENDANT'S CASE**

5. The defendant admitted that she is the owner of land parcel no. KERICHO/KIPKELION/BARSIELE (KAPLABA)/138 but denied that she had blocked the plaintiff's access to the main road through the road that passes through her land. She testified that the plaintiff has been using the access road that passes between parcel no. 138 and 195 which has been in existence for a long time. She stated that when the road between land parcel no. 138 and 202 was opened, it resulted in a reduction of her land acreage. The defendant's two witnesses corroborated her testimony with regard to the existence of the access road between parcels no. 138 and 195.

After the close of the defendant's case both parties filed their submissions which I have considered.

## **ISSUES FOR DETERMINATION:**

6. The issues that fall for determination are as follows:

- i. Whether a road of access exists between land parcel no 138 and 195 and if so whether the said road is legal.
- ii. Whether a road of access exists between land parcels no. 138 and 202
- iii. Which road is the plaintiff entitled to use to access the main road?
- iv. Whether the designated access road was blocked by the defendant
- v. Whether the plaintiff is entitled to the reliefs sought.

## **ANALYSIS AND DETERMINATION**

7. With regard to the first issue, it is common ground that even though the road exists on the ground, the same does not exist on the Registry Index Map and it is therefore illegal.

8. The answer to issue no. 2 is in the affirmative. The plaintiff produced the Registry Index Map and a sketch map clearly showing that there is a road passing through land parcel no. 138 and running parallel to the boundary of land parcel no. 202. This is the road that was opened up by the District Surveyor for use by the plaintiff. The existence of this road was confirmed by the court during its site visit to the suit property on 6<sup>th</sup> July 2018.

9. Regarding the third issue, the plaintiff is entitled to use the access road between land parcel no. 138 and 202 in order to access the main road as this is the road that is provided for in the Registry Index Map. The plaintiff's assertion that the plaintiff has access to two access roads is not correct as one of the roads is illegal.

10. With regard to the fourth issue, it is apparent that what prompted the plaintiff to file suit against the defendant was the fact that he had blocked the plaintiff from using the designated road between land parcels no. 138 and 202 by erecting timber and iron sheets where the road was supposed to pass and she instead created a road for him between land parcels no. 136 and 195. When the District Surveyor went to open the access road between land parcels no. 138 and 202 he found that the road that was supposed to be used by the plaintiff was 80 meters from where it was supposed to be.

11. Moving on to the last issue, the plaintiff seeks declaratory orders with regard to use of the access road on the Registry Index Map as well as a permanent injunction to restrain the defendant from interfering with the plaintiff's right of access to a public road adjacent to the defendant's land parcel no. KERICHO/KIPKELION/BARSIELE (KAPLABA)/138. The court already granted an injunction against the defendant pending the hearing and determination of this suit. Having heard the evidence of both parties, I am persuaded that the plaintiff has proved his case to the required standard and I have no reason to vary the order of injunction.

12. In view of the foregoing I enter Judgment in favour of the plaintiff and make the following final orders:

- a) A declaration is hereby issued that the Plaintiff who is the registered owner of land parcel no. KERICHO/KIPKELION/BARSIELE BLOCK 2 (KAPLABA)/136 has a right of access to the public road which is adjacent to the defendant's land parcel no. KERICHO/KIPKELION/BARSIELE (KAPLABA)/138 as established in the amended Registry Index Map.
- b) A permanent injunction is hereby issued restraining the defendant from interfering with the Plaintiff's right to access the public road adjacent to the defendant's land parcel no. KERICHO/KIPKELION/BARSIELE (KAPLABA)/138
- c) The costs of this suit shall be borne by the defendant.

**Dated and signed this 21<sup>st</sup> day of January 2020.**

**J. M. ONYANGO**

**JUDGE**

**Dated, signed and delivered at Kericho this 5<sup>th</sup> day of February, 2020.**

**ANTONY KANIARU**

**JUDGE**