



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

ELC NO. 75 OF 2014

ENOCK IMBUYE KUFWAFWAPLAINTIFF

VERSUS

BARNABAS AKENGA1ST DEFENDANT

ISAAC WANYONYI2ND DEFENDANT

JOHN WANYONYI3RD DEFENDANT

JAMES MONG'ARI4TH DEFENDANT

**THE HON. ATTORNEY GENERAL (On behalf of the
ASSISTANT COUNTY COMMISSIONER – KIMININI SUB-COUNTY)**

AREA MANAGER KIMININI LOCATION

AREA MANAGER KIMININI SUB-LOCATION.....5TH DEFENDANT

RULING

1. The applicant filed a notice of motion dated 24/4/2014 in which he seeks an order of injunction restraining the respondents from using a foot path which they have created on his land. The applicant also prays for an order directing the respondents to remove a temporary bridge which has been erected connecting his land and that of the respondents.
2. The applicant is the registered owner of LR NO. Kiminini/Matrunda Block 8/Sango/6 measuring 9.20 hectares. The applicant's land is separated from the respondents land by River Kiminini which is the boundary between Trans-Nzoia and Bungoma counties. The applicant's land is in Trans-Nzoia County whereas those of the 1st to 4th respondents fall in Bungoma County. The applicant contends that the respondents have created a footpath which traverses through his land dividing it into two. The applicant contends that he has tried to prevent the respondents from passing through his land but that the respondents have refused to desist from passing through his land.
3. The applicant contends that the respondents have constructed a temporary bridge across River Kiminini which enables them to pass through his land and that his efforts to prevent the respondents from trespassing into his land have been futile as the respondents have got support from the Assistant County Commissioner Kiminini Sub-County and the area Manager Kiminini Sub-location and location. The respondents destroyed the barbed wire which the applicant had used to secure his land. They also razed down his residential house and destroyed his crops. He reported the incident to the local police post and

Kitale Police Station which led to the arrest of some respondents who have since been charged with criminal offences in court.

4. The applicant contends that the assistant commissioner Kiminini Sub-County convened a public baraza following the destruction of the applicant's properties in which he urged the respondents to continue using the foot path. The applicant contends that the respondents acts amount to trespass and that they are interfering with his quiet enjoyment of his land. He prays that the respondents be restrained from trespassing on to his land and that the bridge across River Kiminni which connects the respondents land with his be removed. The applicant contends that there is no designated road or foot path passing through his land and that there are designated roads which the respondents can use.

5. The applicant's application is opposed by the 2nd and 4th respondents who filed replying affidavits on 25/6/2014 and 10/10/2014 respectively. The second respondents contends that the foot path which passes through the applicant's land has been there since colonial times and ought not be blocked. The second respondent contends that it is the applicant who blocked the access road and destroyed the bridge which connects their land and that of the applicant. The 5th defendant on the other hand contends that the respondents have been using the foot path for over 20 years and as such they have acquired prescriptive rights over the same. The assistant county Commissioner of Kiminini sub-County avers that he convened a public baraza on 15/4/2014 in which he advised that the temporary road of access do remain in place pending a permanent solution to the issue. He confirmed that the applicant's properties had been destroyed.

6. I have carefully considered the applicant's application as well as the opposition to the same by the 2nd and 5th respondents. The principles for grant of temporary injunction are now well settled. Firstly an applicant must demonstrate that he has a prima facie case with a probability of success. Secondly, an injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury. Thirdly, if the court is in doubt, it will decide the application on the balance of convenience.

7. In the present case, the applicant has demonstrated that he is the registered owner of the land where the respondents are passing through. There is no designated road or footpath passing through the applicant's land. The respondents have gone to an extent of destroying the applicant's properties. The respondents action have received tacit support from the assistant county Commissioner Kiminini Sub-County. It is unfortunate that people who are supposed to ensure there is peace can be seen to be condoning acts of lawlessness and urging people to invade other people's properties with impunity. There are lawful ways provided in law which can be used to gain access but not to force a way through private land. I find that the applicant has demonstrated that he has a prima facie case with probability of success.

8. The respondents have destroyed the applicant's fence, they have razed down his residential house and destroyed his crops. They cannot in the circumstances be allowed to continue trespassing into the applicant's land. The continued trespass in the circumstances cannot be compensated. There is no justification at all for the respondents to continue trespassing on to the applicant's land.

9. The respondents are using the temporary bridge across River Kiminini to commit acts of trespass upon the applicant's land. It is the same bridge which they used when they came to raze down the applicant's house and destroy his crops. The respondents actions are clearly meant to pull a quick one against the applicant. I therefore grant an injunction restraining the respondents from trespassing onto the applicant's land until hearing and determination of this suit. I also order that the respondents do remove the temporary bridge connecting their land and that of the applicant. The applicant shall have costs of this application.

It is so ordered.

Dated, signed and delivered at Kitale on this 3rd day of December, 2014.

E. OBAGA

JUDGE