

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT MAKUENI**  
**ELCC NO. E019 OF 2024**

**THERESIA NTHAMBI KISVI.....**  
**PLAINTIFF**

**-VERSUS-**

**ESTHER NDULULU KATIKU..... 1<sup>ST</sup>**  
**DEFENDANT**

**KITHUKA KATIKU..... 2<sup>ND</sup> DEFENDANT**

**FLORENCE MUTHEE MULI..... 3<sup>RD</sup>**  
**DEFENDANT**

**LAND SURVEYOR, MAKUENI..... 4<sup>TH</sup> DEFENDANT**

**LAND REGISTRAR, MAKUENI COUNTY..... 5<sup>TH</sup> DEFENDANT**

**JUDGMENT**

1. The Plaintiff filed this suit against the Defendants seeking the following reliefs:
  - 1) **Closure of the illegal access road passing through Plaintiff's land parcel Makueni/Kako/2600.**
  - 2) **Fresh survey to be conducted to ascertain the exact boundary between land parcel Makueni/Kako/2600 and 217.**
  - 3) **Costs of this suit.**
  - 4) **Any other just relief this honourable court deems fit to grant.**
2. The Defendants who were duly served neither entered appearance nor filed defence. The case therefore proceeded by way of formal proof.
3. The Plaintiff testified that she is the owner of LR No. Makueni/Kako/2600 (suit property) which neighbours LR No. Makueni/Kako/217 which is owned by Jonathan Katiku Ngututu (deceased). The 1<sup>st</sup> Defendant is widow of the deceased. The 2<sup>nd</sup> Defendant is son to the deceased whereas the 3<sup>rd</sup> Defendant is daughter in law to the deceased.

4. The 1<sup>st</sup> to 3<sup>rd</sup> Defendants sold LR No. Makueni/Kako/217 to third parties and illegally created an access road through the suit property. The Plaintiff contacted a surveyor from Makueni County who visited the two parcels and confirmed that indeed the access road being used by the 1<sup>st</sup> to 3<sup>rd</sup> Defendants and the purchasers passes through her land and that it does not exist in the Registry Index Map.
5. The Plaintiff produced a survey report dated 29<sup>th</sup> May, 2024. The Plaintiff testified that she took a surveyor to the ground to position the access road on the correct side but the 1<sup>st</sup> to 3<sup>rd</sup> Defendants resisted. It is on this basis that she is seeking the reliefs in the plaint.
6. I have considered the evidence of the Plaintiff which is not controverted. From the survey report produced, the access road which is being used by the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants is on her land. This access road should not be used by the 1<sup>st</sup> to 3<sup>rd</sup> Defendants who are trespassing on it. I find that the Plaintiff has proved her case on a balance of probabilities. I allow the Plaintiff's claim in terms of prayer 1, 2, 3 and 4.

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**HON. E. O. OBAGA**

**JUDGE**

**JUDGMENT DATED, SIGNED AND DELIVERED VIA MICROSOFT  
TEAMS THIS 29<sup>TH</sup> DAY OF OCTOBER, 2025.**

**IN THE PRESENCE OF:**

The Plaintiff

Court assistant – Steve Musyoki