

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA

ELC CASE NO. 87 OF 2014

ISAAKA VULIMU KIGAMWA.....PLAINTIFF

VERSUS

RASOFIA MIDEVA NDENGA..... DEFENDANT

JUDGEMENT

By a plaint dated 24th March 2014, the plaintiff is the legal registered owner of land parcel known as North Maragoli/Kivagala/885. That the road leading to the plaintiff land has been blocked by the defendant herein Rasoha Mideva Ndenga by planting on the same. That the said road passes through land parcel known as North Maragoli/Kivagala/886 and 888. That he took the issue to the Vihiga Land Registrar who arbitrated over the issue and gave their ruling. That the defendant herein has persisted and refused to open up the access road that lead to his premises. That an award of damages alone may not suffice as a remedy given that the plaintiff has been blocked by the defendant to access to his land. The plaintiff prays for judgment in his favour for orders that:-

1. A permanent injunction restraining the defendant personally or by her agents or workers from blocking and or closing the access road passing through parcel of land known as North Maragoli/Kivagala/886 & 888 leading to land parcel known as North Maragoli/Kivagala 885 or interfering in any manner complained of or at all and they all be restrained.
2. That the Land Registrar Vihiga and District surveyor to move to the site and mark the road.
3. That costs be provided for.
4. Any other remedy the court may deem fit and just to grant.

This court has considered the plaintiff's case and submissions therein. The defendant was served but failed to attend court or file any defence. It is a finding of fact that the plaintiff is the legal registered owner of land parcel known as North Maragoli/Kivagala/885 (PEx1). It is the plaintiff's testimony that the road leading to the plaintiff land has been blocked by the defendant herein Rasoha Mideva Ndenga by planting plants on the same. That the said road passes through land parcel known as North Maragoli/Kivagala/886 and 888. It is a finding of fact he took the issue to the Vihiga Land Registrar who arbitrated over the issue and gave its ruling confirming that the road does exist (PEx2). No evidence has been adduced to challenge the plaintiff's evidence. I find that the plaintiff has proved his case on a balance of probabilities and I grant the following orders;

1. A permanent injunction restraining the defendant personally or by her agents or workers from blocking and or closing the access road passing through parcel of land known as North Maragoli/Kivagala/886 & 888 leading to land parcel known as North Maragoli/Kivagala 885 or interfering in any manner complained of or at all and they all be restrained.
2. That the Land Registrar and District Surveyor Vihiga to move to the site and mark the road.
3. Each party to bear their costs as the matter was undefended.

DELIVERED, DATED AND SIGNED AT KAKAMEGA IN OPEN COURT THIS 9TH DAY OF APRIL 2019.

N.A. MATHEKA

JUDGE