



**REPUBLIC OF KENYA**

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

**ELC CASE NO. 661 OF 2014**

**GEORGE BISAHO IKOLOMANI.....PLAINTIFF/APPLICANT**

**VERSUS**

**ALFRED IKAMBILI**

**DEFINA WILLIAM.....DEFENDANT/RESPONDENTS**

**RULING**

This application is dated a 14<sup>th</sup> July 2016 and brought under order 40 rule 1 & 2 of the Civil Procedure Rules, Sections 3 and 3A of the Civil Procedure Act seeking the following orders;

1. THAT this application be certified urgent and service be dispensed with in the first instance.
2. THAT the defendants/respondents be compelled to re-open the road of access between land parcels Kakamega/Shibuname/1105 and 1085 to Kakamega/Shibuname/1083.
3. THAT costs be provided for.

The applicant submitted that, he is the registered owner of all that parcel of land known as Kakamega/Shibuname/1083 measuring 0.32 Ha and which borders land parcel No. Kakamega/Shibuname/1105 occupied by the 1<sup>st</sup> defendant and Kakamega/Shibuname/1085 occupied by the 2<sup>nd</sup> defendant. That the defendants have closed the road of access leading to his land hence causing him mental anguish as he has to use a long route to his home. That the defendants shall suffer no loss if the orders sought are granted. That he will continue to suffer mentally and physically if the orders sought are not granted.

The respondents submitted that, they know the plaintiff herein. He is their immediate neighbour by virtue of being a buyer. That they was served with the summons to enter appearance and plead herein. That it is true that the plaintiff is their neighbour from North-East direction. That it is not true that they have encroached on the access road that serves the plaintiff. That it is within their knowledge that the plaintiff is served by an access road that passes along LR. KAKAMEGA/SHIBUNAME/1104. That the access road that the plaintiff seeks to re-open serves the 1<sup>st</sup> and 2<sup>nd</sup> defendants only hence the plaintiff has no right of claim to it. In fact it is trespass because the plaintiff is not entitled to the access road, as he claims. That based on the explanation above it is clear that the plaintiff's claim is baseless and should be dismissed with costs.

This court has considered both the applicant's and the respondents' submissions. The application is based on the following grounds set hereunder and on further grounds on the affidavit of GEORGE BISAHO IKOLOMANI. The applicant is the registered owner of all that parcel of land known as Kakamega/Shibuname/1083 measuring 0.32 Ha and which borders land parcel No. Kakamega/Shibuname/1105 occupied by the 1<sup>st</sup> defendant and Kakamega/Shibuname/1085 occupied by the 2<sup>nd</sup> defendant. The applicant avers that there existed a road of access between land parcels No. Kakamega/Shibuname/1085 leading to his parcel No. Kakamega/Shibuname/1083. The defendants have without any justifiable reason closed the road of access leading to the applicant's land. That the defendants/respondents shall suffer no loss if the orders sought are granted. That the applicant shall suffer mental anguish, as he has to use a large course to access his home if the orders sought are not granted.

It is not in dispute that the applicant is the registered owner of all that parcel of land known as Kakamega/Shibuname/1083 measuring 0.32 Ha and which borders land parcel No. Kakamega/Shibuname/1105 occupied by the 1<sup>st</sup> defendant and Kakamega/Shibuname/1085 occupied by the 2<sup>nd</sup> defendant. The respondents state that they have not encroached on the applicant's land and there is no access road through their land. I find that the orders sought in this application are final orders and cannot be granted at this interlocutory stage. There is no surveyors report to show whether or not the access road is through the respondents' land. I find that the application has no merit and I dismiss the same with costs.

It is so ordered.

**DELIVERED, DATED AND SIGNED AT KAKAMEGA IN OPEN COURT THIS 24<sup>TH</sup> DAY OF JANUARY 2018.**

**N.A. MATHEKA**

**JUDGE**