



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT MACHAKOS**

**ELC. MISC. APPLN. NO. 45 OF 2017**

**HARRICAN KIOKO NDETI.....APPLICANT**

**VERSUS**

**JOSEPH MUSILA MAKAU.....RESPONDENT**

**JUDGMENT**

1. The Miscellaneous Application before me is the one dated 10<sup>th</sup> April, 2017. In the Application, the Applicant is seeking for the following orders:

*a. That this Honourable Court be pleased to grant an access order to the Applicant from the Applicant's land parcel number Muputi/Kiima-Kimwe/1096 through land parcel number Muputi/Kiima-Kimwe/1112 to access the public road to Kyamuluu Secondary School as per the report and sketch plan of the surveyor dated 9<sup>th</sup> November, 2015 on such terms as are just in the circumstances.*

*b. That the Respondent be ordered to meet the costs of this Application and any costs in implementing the access order.*

*c. That the compliance of the access order be supervised by the office of the County Commissioner for Machakos County.*

2. The Application is premised on the grounds that the Applicant is the registered proprietor of a parcel of land known as Muputi/Kiima-Kimwe 1096; that the said land is adjacent to parcel of land number 1112 and 1111 and that parcel of land number 1112 extends upto the main public road to Kyamuluu Secondary School which links the area to the Machakos-Kitui road.

3. It is the Applicant's case that the Defendant, who owns parcel of land number 1112, has completely blocked his access to the main road and that a surveyor visited the land and drew a sketch plan re-opening the access road in the presence of the Respondent.

4. The Applicant deponed that this court has the power to grant an access order to enable him access the only serviceable main road.

5. In response, the Defendant stated that he is not the registered owner of parcel of land known as 1112; that the said land is registered in the names of Kamene Makau and Yula Makau (*deceased*) and that there is no administrator of the Estate of the deceased persons.

6. The Respondent denied that a Surveyor visited the suit land and prepared a report dated 9<sup>th</sup> November, 2015 and stated that he does not have land which has a road of access as alleged by the Applicant.

7. The Applicant and the Respondent's advocates filed brief submissions which I have considered.

8. The evidence before me shows that parcel of land known as Muputi/Kiima-Kimwe/1112 was registered in favour of Kamene Makau and Yula Makau as proprietors in common on 25<sup>th</sup> May, 1977.

9. According to the letter of the Senior Assistant Chief of Muvuti Sub-Location dated 18<sup>th</sup> September, 2017, the proprietors of the said parcel of land are both deceased.

10. The Applicant is seeking for an order of the court to have an access road to be opened through parcel of land number 1112 so to join a public road.

11. The Applicant has not exhibited evidence to show that the Respondent herein is the proprietor of parcel number 1112. Indeed, the evidence before me shows that the registered proprietors of parcel number 1112 are deceased. Consequently, the Respondent who is not the legal representative of the deceased persons is non-suited.

12. In any event, the Applicant has not exhibited evidence to show that there is or there was an access road on parcel number 1112. The Applicant has not produced any evidence to show that a survey was carried out, with the concurrence of the registered proprietors of parcel number 1112, and created a road on the said land.

13. Considering that parcel number 1112 is private land, the procedure provided for under the Public Roads and Roads of Access Act, Cap 399 have to be followed before the creation of an access road on parcel number 1112 can be done. The procedure includes serving on the proprietor of land over which the proposed road of access is to pass a notice by the District Road Board and obtain the consent of the proprietor and the "*highway authority*" responsible of the public road to which any proposed road of access will be joined.

14. The Board is also required to hear all the parties that would be affected by the creation of such an access road.

15. Considering that the Respondent is not the legal representative of the proprietors of parcel number 1112 and in the absence of any evidence to show that the procedure under the Public Roads and Roads of Access Act was ever followed, I find the suit before me to be unmeritorious.

16. For those reasons, I dismiss the Miscellaneous Application dated 10<sup>th</sup> April, 2017 with costs.

**DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 23<sup>RD</sup> DAY OF FEBRUARY, 2018.**

**O.A. ANGOTE**

**JUDGE**