



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

IN BUSIA

LAND & ENVIRONMENTAL DIVISION

ELC NO. 63 OF 2015

REBECCA M'MBONE ACHOLA.....1ST PLAINTIFF

ARGWINGS MILLAN ACHOLA.....2ND PLAINTIFF

VERSUS

MARGARET TABU MUSUNGU.....DEFENDANT

J U D G E M E N T

1. The two Plaintiffs – **REBECCA M. MBONE ACHOLA** and **ARGWINS MILLAN ACHOLA** – instituted this suit against the Defendant – **MARGARET TABU MUSUNGU** – on 18/6/2015 vide a plaint dated 17/6/2018. They complain that the Defendant, who is the registered owner of land parcel No. **BUKHAYO/BUGENGI/7902** has blocked a road of access to their land parcel No. **BUKHAYO/BUGENGI/7903** (these two parcels are hereafter parcel No. 7902 and 7903 respectively).

2. The Defendant is said to have put up a pit latrine and a kitchen on the road of access. Additionally, he is also cultivating on it. The effect of the Defendant actions is that the Plaintiffs are without a road of access to and from the main road. The Plaintiffs pleaded that they complained to the land's office and both the land registrar and land surveyor visited the scene and confirmed that the road of access is actually blocked.

3. It appears clear that the Defendant was served but he never entered appearance and/or filed defence. As a result, interlocutory judgement was asked for and the same was entered on 12/2/2016. Thereafter, the matter came for formal proof and the two Plaintiffs, who are mother and son, testified as PW1 and PW2. The court took their evidence on 17/7/2017. The Plaintiffs said they acquired parcel No. 7903 through purchase in the year 2012. At that time, there was a road of access.

4. Then in the same year, the Defendant, whose land fronts that of the Plaintiffs, blocked the road of access. The Plaintiffs called PW3 – **MARTIN OSANO** – who is the County Land Registrar. This witness confirmed that the Defendant, who is the owner of parcel No. 7902, has blocked the road of access to parcel No. 7903 owned by the Plaintiffs.

5. In the course of hearing, various exhibits were produced. The 1st Plaintiff produced the title deed (PEX No. 1) showing that she owns the land with 2nd Plaintiff. PW3 produced a copy of green card (PEX 6), mutation form (PEX No. 4), land map of the area (PEX No. 7), letter from lands office to the area chief asking him to open the road of access (PEX No. 3) and yet another letter confirming the access road is blocked (PEX No. 2).

6. Written submissions were filed by the Plaintiffs' counsel, Mr. Onsongo, on 30/11/2017. The submissions term the Defendant as a malicious neighbour. She had the opportunity to sort out the matter before coming to court but she declined. It was submitted too that what was availed in this suit shows the road of access is blocked.

7. This is uncontroverted matter. Though evidently served, the Defendant did not show up to contest the matter. The suit proceeded without her. The evidence availed shows that the road of access leading to the Plaintiffs land is blocked by her. She has constructed on it. She is also cultivating there. This has completely left the Plaintiffs land without a road of access. This state of affairs is unacceptable. It baffles the mind how the Defendant expects the Plaintiffs to enter and leave their land. The road of access is actually not a favour from the 1st Defendant to the Plaintiffs; it is the plaintiffs' lawful entitlement. Nor is the road of access part of the Defendant's land; it is for all the people in the area, the Plaintiffs included.

8. Without much ado therefore, the court gives an order that the road be re-opened. The Defendant can do it upon service of the court order.

The Defendant is given 3 months after delivery of this judgement to remove her structure and other things on that road. If she does not do so, the Plaintiffs are at liberty to do it themselves through lawful enforcement agencies. The Defendant will bear the costs of the exercise if she does not co-operate. An injunction is also granted restraining the Defendant or others through her or at her behest from blocking the road again. The Defendant will also pay costs of the suit plus interests at court rates.

Dated, signed and delivered at Busia this 19th day of April, 2018.

A. K. KANIARU

JUDGE

In the Presence of:

1st Plaintiff:

2nd Plaintiff:

Defendant:

Counsel of Plaintiff.....

Counsel of Defendants.....