



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MAKUENI

ELC NO. 100 OF 2017

PETER MUTISO WAMBUA.....PLAINTIFF

VERSUS

NDUNGO MUTHEMBWA MUSOMBA.....DEFENDANT

JUDGMENT

1) By his plaint dated 28th March, 2014 and filed in court on 23rd April, 2014 the Plaintiff prays for judgment against the Defendant for :-

a) An order compelling the Defendant to unblock the surveyed access road to the Plaintiff Land Parcel No. Kisau/Nduluku/771.

b) A permanent order of injunction to restraining(sic) the Defendant by himself, his agents and/or servants from interfering with the Plaintiff's peaceful occupation of the said Land Parcel No. Kisau/Nduluku 771 and access thereto.

c) Costs and interests of the suit.

2) On the 16th May, 2014 the Defendant was served with summons to enter appearance and to file his defence as can be seen from the affidavit of service sworn at Machakos on the 12th June, 2014 by Jacob M. Muthenya who is a process sever. On the 21st September, 2017 the court directed that this suit do proceed as undefended.

3) Hearing of the Plaintiff's case commenced on the 22nd November, 2017. His evidence was that he is a resident of Kisau Nduluku and that he owns land parcel number Kisau/Nduluku/771 having bought the same from Muthembwa Musomba (PW1). The Plaintiff went on to say that Musomba (PW1) allowed him to have a road of access which was later blocked by one of Musomba's (PW1) sons. He revealed that the road of access was parceled by a Surveyor and had mutation form to prove it.

4) The Plaintiff produced title deed for land parcel number Kisau/Nduluku/771, mutation form and demand letter issued to the Plaintiff as P Ex. Nos 1,2 and 4 respectively.

5) The Plaintiff's evidence is supported by the evidence of Musomba (PW1) and that of Mulinge Mark(PW2).

6) Musomba (PW1) adopted his statement which he recorded on the 28th March, 2014 as his evidence. In his evidence Musomba (PW1) confirmed having sold land parcel number Kisau/Nduluku/771 to the Plaintiff and proceeded to transfer the same to him. He pointed out that a road of access was lawfully created with his consent by Surveyor as per the agreement that he had with the Plaintiff. He went on to say that on or about April, 2013 the Defendant who is his son blocked the road of access that lead to the Plaintiff's parcel of land without lawful justification. He further said that despite his and the Plaintiff's warning to the Defendant to re-open it, the latter did not heed.

7) Mulinge (PW2) in his evidence told the court that he is a holder of diploma in cartography from the Kenya Institute of Surveyors and Mapping. He said that the survey map for Kisau/Nduluku registration section sheet or diagram number 6 shamba number Kisau/Nduluku/771 shows that it has an access road whose width is 10 metres.

8) The witness added that the access road is approximately half a Kilometre from a 20 metre road. He produced the survey map which he printed on 24th January, 2018 as PEx no. 3.

9) The Plaintiff's counsel in his written submissions urged the court to find that the Plaintiff has proved his case on a balance of probabilities and hence proceed to grant to the prayers.

10) From the evidence on record, there is no doubt that land parcel number Kisau/Nduluku/771 belongs to the Plaintiff herein. The parcel of land is served by an access road which is reflected in the survey map sheet number 6. The said access road was lawfully established pursuant to the agreement that the Plaintiff had with Musomba (PW1). That being the case, the Defendant had no business to block the said road of access. In a nutshell the Defendants actions were unlawful. I agree with the Plaintiff's counsel that the Plaintiff has on a balance of probabilities shown that he has a cause of action against the Defendant.

11) In the circumstances, I hereby proceed to enter judgement for the Plaintiff and against the Defendant in terms of prayers(a),(b) and (c) of the plaint.

Signed, dated and delivered at Makueni this 31st day of May, 2018.

MBOGO C.G

JUDGE

IN THE PRESENCE OF:

In the presence of Ms Walta for the Plaintiff

No appearance for the Defendant

MBOGO C.G, JUDGE

31/5/2018