



REPUBLIC OF KENYA

ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO. 43 OF 2018

JUSTO WAFULA WANYAMA.....PLAINTIFF

VERSUS

JOSEPH SIMIYU.....1ST DEFENDANT

MARY SIKUKU.....2ND DEFENDANT

JUDGMENT

1. In the plaint dated 18/4/2018 filed in this suit on 20/4/2018 the plaintiff seeks the following prayers:-

- (a) An order permanently restraining the 1st and 2nd defendants herein from encroaching onto the said access road.**
- (b) Costs of this suit.**
- (c) Any other or further relief this honourable court may deem fit and just to grant.**

2. The affidavit of Raphael Nyongesa Simiyu a court process server dated 26/4/2018 was filed on 16/5/2018. It shows that service of the summons to enter appearance, plaint and other documents in the suit was effected upon the defendants on 25/4/2018. Despite that the defendants never filed any memorandum of appearance or defence. They never appeared at the hearing when this case was listed for formal proof. The plaintiff alone testified in the suit.

3. According to the plaint and evidence given by the plaintiff the plaintiff is the registered owner of **LR. No. Kwanza/Namanjalala Block 5/781** which is served by an access road that is six metres wide off the Matisi Liavo road; that the defendants whose land parcels are also served by the said access road have gradually encroached onto the said access road by moving their fences and blocking it. They are using land that is part of the access road for agricultural purposes.

4. The 1st defendant owns parcel No. **LR. No. Kwanza/Namanjalala Block 5/870** while the 2nd defendant owns plot No. **783**. The plaintiff produced his original title to **LR. No. Kwanza/Namanjalala Block 5/781** as P. Exhibit 1. He averred that due to the encroachment by the defendants upon the access road he has to pass through another person's land to get to his home. He produced a map which showed that there is a road of access between parcel No. **870** and Parcel No. **783**. That upon his complaint to the lands office surveyors came at the site, took measurements and confirmed in a report which was also produced in the court as P. Exhibit 4 that the road of access encroached upon by the 2 defendants exists in the map for the area. He also stated that when the surveyors came to open the road the defendants prevented them from doing so. He also produced a letter from County Surveyor's office notifying the Chief, Namanjalala that the Surveyor's visit to the site would be undertaken on 8/2/2018 and requesting him to inform the owners of the neighbouring parcels to be present during the exercise.

5. I have examined the documentary evidence produced by the plaintiff and I am satisfied that he owns **LR. No. Kwanza/Namanjalala Block 5/781**. I am also satisfied that there is a road of access to his said land and that that road of access is blocked by the defendant. The plaintiff has therefore established his claim against the defendants on a balance of probabilities. I therefore enter judgment in favour of the plaintiff against the defendants jointly and severally and order as follows:-

- (a) The defendants shall immediately open and keep open without any encroachment the access road between parcel No. LR. No. Kwanza/Namanjalala Block 5/870 and LR. No. Kwanza/Namanjalala Block 5/783.**
- (b) A permanent injunction shall issue restraining the defendants from encroaching on the said access road.**
- (c) The defendants shall bear the costs of this suit.**

Dated, signed and delivered at Kitale on this 31st day of July, 2018.

MWANGI NJOROGI

JUDGE

31/7/2017

Coram:

Before - Mwangi Njoroge, Judge

Court Assistant - Picoty

Mr. Bororio for plaintiff

N/A for the defendant

COURT

Judgment read in open court.

MWANGI NJOROGI

JUDGE

31/7/2018