



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT & LAND COURT AT MERU**

**ELC NO. 102 OF 2017**

**WILFRED LIMIRI MUKUCHIA & 11 OTHERS.....PLAINTIFF**

**VS**

**COUNTY GOVERNMENT OF MERU.....DEFENDANT**

**RULING**

1. This Ruling is in respect of the application filed on 23.03.17 seeking orders:-

1) Spent.

2) That an order of temporary injunction do issue restraining the Defendant, its agents, servant or anyone acting through it from barricading, closing or in any other manner whatsoever interfering with public roads known as Miathene to Kalimba Primary School through Miathene Sub-District and Miathene to Kajalu coffee factory through Miathene Sub District Hospital, pending inter partes hearing of this application.

3) That an order of temporary injunction do issue restraining the Defendant, its agents, servants or anyone acting through it from barricading, closing or in any other manner whatsoever interfering with public roads known as Miathene to Kalimba Primary School through Miathene Sub-District Hospital and Miathene to Kajalu coffee factory through Miathene Sub-District Hospital, pending the hearing and determination of this suit.

4) That costs be provided for.

2. The application is based on the grounds:-

1) That the Defendant had deployed a contractor to barricade and close the public roads above stated.

2) That the said public roads serve the Applicants and other residents of Mbuya/Kalimba area and several public institutions and have been in existence since the year 1966 when land adjudication process in the area was done.

3) That the said public roads are well planned and exist in the official Government records.

4) That the Defendant's decision to close the public roads is illegal and has no basis in law.

5) That if the Defendant's illegal decision is allowed to stand, the Applicants will be denied right of use of the said public roads and access to their homes, Markets and other public utilities.

3. One Wilfred Limiri Mukucha, the 1<sup>st</sup> Plaintiff has filed a supporting affidavit to the application where he states that all the Plaintiff/Applicants are residents of Mbuya/Kalimba area of Tigania West Sub-Location and own land parcel numbers 542, 6485, 3717, 2211, 3718, 6519, 5991, 1554, 1603, 9141, 2827 and 4220 respectively in that area.

4. Applicants aver that they access their homes through the public roads known as Miathene to Kalimba primary school and Miathene to Kajalu coffee factory through Miathene Sub-District Hospital.

5. Applicants state that the two public roads exist in the official Government records and have been in existence since the year 1966 when the land Adjudication process in the area was completed. However, the Defendant's executive member for health and his counterpart for transport and infrastructure have issued an oral directive to close the two public road, and have deployed a contractor on the ground to barricade and close the two public roads.

6. Applicants claim that the Defendant's decision to barricade the public road is illegal, unconstitutional and has no basis in law whatsoever.

7. The application was heard before Judge Njoroge in the first instance on 27.03.17 where interim orders of injunction were given with directions that matter be heard on 06.04.17. On 06.04.17, defence was represented by Munene holding brief for Raichena for defendants and they proposed to put in a response within 14 days. Directions were given for application to be heard on 31.05.17. The interim injunctive orders were extended until then.

8. Down the line, the applicants filed an application of 25.05.17 to have the scene visited. The Court directed the Executive Officer of Meru Court to visit the scene and file a report thereof: The report is in the Court file (dated 05.07.17).

9. I find that todate the respondents have never filed their response.

10. The Executive Officer's report dated 05.07.17 confirms the existence of the roads. The one from Miathene shopping Centre on the North Eastern side had some rumbles and abandoned metal grill. The second road is from Miathene to Kalimba Primary School. Evidence of the road having been blocked was there but it had been unblocked.

For the 3<sup>rd</sup> road Miathene Kajalu coffee factory road, it's blocked but the blockage according to the report occurred about 6 months ago.

The defendants have not in any way rebutted the averments raised in the application.

11. I therefore find that the application of 22.03.17 is meritorious. Prayer 3 is allowed until the suit is heard and determined. Costs in the cause.

**DELIVERED, SIGNED AND DATED AND IN OPEN COURT AT MERU THIS 27<sup>TH</sup> DAY OF SEPTEMBER, 2017 IN THE PRESENCE OF:-**

CA: Janet

M.Kariuki for Plaintiff present

**Hon. L. N. MBUGUA**

**ELC JUDGE**