



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO. 167 OF 2014

ESTHER MUTENYO EGESA.....PLAINTIFF

VERSUS

DANIEL NYANGA.....1ST DEFENDANT

PATRICK MABUKA WANJ.....2ND DEFENDANT

J U D G M E N T

INTRODUCTION

1. The plaintiff is the registered owner of **L.R. No. Kiminini/Matunda Block 7/462**. The first defendant is the registered owner of **L.R. No. Kiminini/Matunda Block 7/656** and the second defendant is the registered owner of **L.R. No. Kiminini/Matunda Block 7/196**. The defendants plots are adjacent to the plaintiff's land. The plaintiff brought this suit against the defendants seeking an order of mandatory injunction ordering the two defendants to open up an access road which they have blocked as well as a permanent injunction restraining the defendants or their agents from interfering with the access road once the same is re-opened.
2. The defendants were duly served with summons to enter appearance but they neither entered appearance nor filed defence. The hearing therefore proceeded by way of formal proof.

PLAINTIFF'S CASE

3. The plaintiff testified that she bought L.R. No. Kiminini/Matunda Block 7/462 from one Wycliffe (suit land). She was shown a road of access from the plot to the main road. She used the road of access from 2002 upto 2003 when the defendants started blocking it. She went and reported the matter to the chief who took it up with the Land Registrar.
4. The Land Registrar and the Surveyor visited the area and opened the access road. The defendants who had been invited to be present were not there when the road was opened. The first defendant came and fenced off the opened road forcing her to file this suit.

ANALYSIS OF EVIDENCE

5. The plaintiff has produced a copy of title [Exhibit 1] which shows that she is the registered owner of the suit land. The plaintiff called **PW2 Christine Kapsilot** who works in the County Surveyor's Office Trans-Nzoia. This witness produced a map which shows the plaintiff's plot and the defendants plots on the ground. She confirmed that the plots were visited by the Land Registrar and County Surveyor who found out that there exists a road of access which has been

blocked by the first and second defendants. The map was produced as Exhibit 2.

6. From the map it is clear that the first defendant is the immediate neighbour of the plaintiff. The second defendant is across the road and is opposite the first defendant. There is a road in between the plots of the first and second defendants. There is an access road which passes through the extreme side of the first defendant's land and exits to the main road which is next to the second defendant's land. It is clear from the map that if there was any blockage, of the road, it is only the first defendant who can block it because he is the only one who is next to the plaintiff. The plaintiff has indeed in her testimony stated that it is the first defendant who blocked the road of access. The second defendant will not have blocked the road without affecting the main road which traverses between his plot and that of the first defendant and serves other more plots as well.

DECISION

7. I find that the plaintiff has proved her case against the first defendant only. She has no case against the second defendant. Her case against the second defendant is dismissed with no order as to costs. I therefore issue a mandatory injunction directing the first defendant to open up the access road leading to the plaintiff's land. The first defendant is hereby restrained by way of permanent injunction from interfering with the road once opened. The first defendant shall bear the costs of this suit.

Dated, signed and delivered at Kitale on this **30th** day of **July, 2015**.

E. OBAGA

JUDGE

30/7/2015

COURT

Judgment delivered in court at 9.54 am in the absence of Plaintiff who was aware of today's date.

Court Assistant – Winnie.

E. OBAGA

JUDGE

30/7/2015