



**Gaita v Karanga (Environment & Land Case E012 of 2024)
[2024] KEELC 6806 (KLR) (17 October 2024) (Ruling)**

Neutral citation: [2024] KEELC 6806 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYERI
ENVIRONMENT & LAND CASE E012 OF 2024**

JO OLOLA, J

OCTOBER 17, 2024

BETWEEN

TITO THEURI GAITA APPLICANT

AND

ROSE WACHUKA KARANGA RESPONDENT

RULING

1. By the Notice of Motion dated 31st May 2014. Tito Theuri Gaita (the Applicant) prays for an order that the Respondent be ordered to open the Public Road which passes through Government Land Parcel No. Mweiga/Gakanga/206 which the Respondent has illegally closed and that in default the court orders the local administration to do so with the help of the OCS Enderasha Police Station.
2. The application is supported by an affidavit sworn by the Applicant and is premised inter alia, on the grounds that:-
 - i. That there has been a public road situated on LR. NO. Mweiga/Gakanga/206 and that the same was put on the map before 1976 when Gakanga Settlement Scheme was surveyed and the farmers were allocated their parcels of land;
 - ii. That in October 2023, the Respondent illegally and unjustifiably proceeded to close the said road thereby subjecting the Applicant and the entire public who use that road to an unnecessary suffering as they lack access to their homes and parcels of land;
 - iii. That the Respondent has been ordering her sons who are armed with pangas and other crude weapons to maintain virgil and ensure nobody uses the road; and
 - iv. The Respondent has also ordered her sons to dig a trench across the road to make sure nobody uses the same.



3. Rose Wachuka Karanga (the Respondent) is opposed to the application. In her Replying Affidavit sworn on 14th June 2024, the Respondent asserts that she is the owner of the parcel of land known as LR. No. Mweiga/Gakanga/206. The Respondent avers that she has been in occupation of the land since 1985.
4. The Respondent denies having closed a public road passing through her land and asserts that sometime in April 2014, following excess rainfall and flooding experienced at the time, she was compelled to divert flood water that had flooded the lower area of her parcel of land to stop the water from entering her land and cause it to continue flowing along the road towards a place known as Gituchu.
5. The Respondent accuses the Applicant of meddling in her affairs by trying to dig a trench to re-direct the water into her parcel of land and asserts that the case has been brought out of malice and spite on the part of the Applicant.
6. I have carefully perused and considered both the application as well as the response thereto as filed by the parties acting in person.
7. By this application before the court, the Plaintiff/Applicant urges the court to direct the Defendant/Respondent to open a public road which he claims to have been closed by the Respondent. In addition. The Applicant wants the court to order the Respondent and her unnamed sons to stop harassing, threatening and chasing away the users of the said road.
8. In support of his case, the Applicant avers that the said road has been in use since 1976 when a survey was carried out in the area. He accuses the Respondent of illegally and unjustifiably proceeding to close the road in October 2023 and thereby subjecting himself and the entire public to unnecessary suffering in accessing their homes and parcels of land.
9. While conceding that there is a public road that passes next to the parcel of land known as LR. No. Mweiga/Gakanga/206, the Respondent asserts that the said parcel of land lawfully belongs to her. She denies having blocked the road and avers that she had only diverted the water way after heavy rainfall caused flooding on the lower part of her parcel of land.
10. While the applicant contends that there was a public road on the suit property, and that the same has been closed by the Respondent, the Applicant has not provided any evidence of the existence of the said road and/or its purported closure by the Respondent.
11. From the annexures to the Respondent's Replying Affidavit, it was evident that there is a road adjacent to the suit property which remains open for public use. While the Applicant appears to suggest that the Respondent illegally occupies the suit property which he terms to be Government land, it was evident from a letter dated 24th April 2016 from the Gakanga sub-Location Assistant Chief, annexed to the Respondent's Affidavit that the Respondent lawfully occupies the suit property having been allocated the same and is now awaiting the processing of titles by the Government.
12. It was difficult for his court to imagine how the Respondent could close a public road and the said action would only affect the Applicant as an individual. While the Applicant purports to have reported the closure of the road to the Police and Local Administration, he has failed to back his claims with



any tangible evidence. The principle that he who alleges must prove is clearly captured under Section 107 (1) of the *Evidence Act* (Cap 80 of the Laws of Kenya) as follows:

“(1). Whoever desires any court to give Judgment to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exists.”

13. In addition to accusing the Respondent of blocking the road, the Applicant claims that the Respondent’s sons have been harassing and threatening the users of the said road. The names of the alleged sons have neither been given nor has the Applicant provided any evidence that if they are indeed acting as such, they are doing so on the instructions of the Respondent.
14. Arising from the circumstances herein, it was evident that, as the Respondent states, the application before me has been brought out of malice and to achieve other ulterior purposes. It has no merit whatsoever and must fail.
15. Accordingly, the Motion dated 31st May 2024 is dismissed with costs to the Respondent.

DATED, SIGNED AND DELIVERED AT NYERI THIS THURSDAY 17TH DAY OF OCTOBER, 2024.

In the presence of:

Mr. Tito Theuri Gaita- the Plaintiff present in person.

Ms. Rose Wachuka Karanga- the Defendant in person.

Court Assistant: Kendi

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J. O. OLOLA
JUDGE

