



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT KERICHO

ENVIRONMENT AND LAND CASE NO.55 OF 2016

SIMON TESOT KIPKIRUI.....PLAINTIFF

VERSUS

SARAH ROTICH..... DEFENDANT

RULING

(Application to stop defendant from interfering with a survey intended to open up a road of access; application not opposed by defendant; application allowed with costs)

This suit was commenced by way of plaint filed on 5 August 2016. The plaintiff is the registered proprietor of the land parcel Kericho/Kipkelion/ Barsiele Block 2 (Kaplaba)/136 whereas the defendant is the registered proprietor of the land parcel Kericho/Kipkelion/ Barsiele Block 2 (Kaplaba)/138. The two land parcels are adjacent to each other. The case of the plaintiff is that on 15 July 2014, the defendant blocked the plaintiff's access to a public road offering to give him an alternative route, which is inaccessible and also illegal, as it does not appear in the Registry Index Map. The said road of access which the defendant is said to have blocked is between the plaintiff's land and a land parcel No. 202 in the same series.

In his suit, the plaintiff seeks the following orders :-

(a) A declaration that the plaintiff who is the registered proprietor of the land parcel Kericho/Kipkelion/ Barsiele Block 2 (Kaplaba)/136 has the right of access to a public road which is adjacent to the defendant's land parcel Kericho/Kipkelion/ Barsiele Block 2 (Kaplaba)/138 as established in the amended Registry Index Map.

(b) A permanent injunction restraining the defendant from interfering with the plaintiff's right of access to a public road adjacent to the defendant's land parcel Kericho/Kipkelion/ Barsiele Block 2 (Kaplaba)/138.

(c) Costs and interest.

Together with the suit, the plaintiff filed an application seeking the following principal order which is prayer 3 of the application :-

That the defendant by herself, her servants, agents employees or any other person acting on her behalf

be restrained by way of an injunction from interfering with the Kericho District Surveyor's work of opening and or marking an access road for use by the plaintiff to link the plaintiff to his parcel of land known as Kericho/Kipkelion/ Barsiele Block 2 (Kaplaba)/136 pending the hearing and determination of this suit.

There is also an order seeking that the OCS Kipkelion do provide security for the exercise.

In his supporting affidavit, the plaintiff has deposed inter alia that he purchased his land in the year 1994 after which he took possession. He has pointed at a public road which is indicated in the Registry Index Map which he has averred that the defendant has barricaded. He has said that he is currently using an illegal road which is inaccessible especially for motor vehicles. He has deposed that he lodged a complaint with the Deputy County Commissioner in Kipkelion on 10 May 2016. The County Commissioner instructed the District Surveyor, Kericho, to determine the access road. On 26 July 2016, the Surveyor prepared a report which the plaintiff annexed to his affidavit. It is his view that he stands to suffer irreparable loss if the injunction is not granted.

Despite being served with summons and the application, the defendant has only entered appearance. His counsel did not appear on the date scheduled for the hearing of the application. It follows that the only material that I have is that of the plaintiff.

I have carefully assessed the same. It appears to me that the only order sought in this application is for the defendant to be restrained from interfering with the surveyor's work of opening the road of access. I have seen from the documents presented that the plaintiff is indeed the registered proprietor of the land parcel Kericho/Kipkelion/Barsiele Block 2 (Kaplaba)/136. It is said that the defendant is the owner of the neighbouring parcel of land and she has blocked a public access road. I have seen that the matter had been referred to the Deputy County Commissioner, Kipkelion Sub-County, who on 10 May 2016 requested the District Surveyor to look into the matter. I have seen the letter dated 26 July 2016 from the District Surveyor stating inter alia that the defendant has blocked them from proceeding to undertake the exercise. The defendant has not tabled any material that would entitle her to block the surveyors from determining the position of the road or to prevent them from opening up any road of access.

I therefore have no reason whatsoever to deny the plaintiff the orders that he has sought. I allow this application. I do issue an order of injunction stopping the defendant from interfering in any way with the surveyor's exercise of determining whether a road of access exists and further issue an order of injunction stopping the defendant from blocking the surveyor or other officers from opening up such road. I further direct the Kericho District Surveyor to proceed to the ground and open up any road of access between the two suit properties. The OCS Kipkelion is hereby ordered to provide security to the plaintiff and the District Surveyor, while conducting the exercise.

The plaintiff shall also have the costs of this application.

It is so ordered.

DELIVERED, DATED AND SIGNED AT KERICHO THIS 28TH DAY OF OCTOBER, 2016.

MUNYAO SILA

JUDGE

ENVIRONMENT & LAND COURT

In the presence of:-

Mr. Mutai holding brief for Mr. Nyambegera for Plaintiff/Applicant

No Appearance on part of M/s G.M Maengwe & Co. Advocates for Defendant/Respondent

G. Wambany Court assistant



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