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**IN THE COURT OF REHMAT ULLAH WAZIR,**  
SENIOR CIVIL JUDGE/JUDICIAL MAGISTRATE, ORAKZAI AT  
BABER MELA

Complaint No. 3/133 of 2022  
Date of Original Institution: 01.10.2020  
Date of Remand: 10.03.2021  
Date of Decision: 28.02.2023

**Muhammad Haneef s/o Khan Haider**  
R/O Kharkai, Ghiljo, Tehsil Upper, District Orakzai

(Complainant)

**VERSUS**

**Kameen Gul s/o Shana Gul**  
R/O Kharkai, Ghiljo, Tehsil Upper, District Orakzai

(Respondent)

**Complaint u/s 133 Cr.P.C For Opening a Public Thoroughfare**

**JUDGEMENT:**

The complainant has brought the instant complaint for opening a public thoroughfare.

Brief facts of the case are that the complainant brought the instant complaint u/s 133 Cr.P.C to the effect that both the parties are the residents of one and the same area. That there is a public thoroughfare in front of the house of the respondent used by the general public for transportation since long. That on 12.09.2020, the respondent closed this public thoroughfare by installing a wood in the

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mid of the same, which created nuisance for the general public. That the respondent may be asked to open the same.


Resultantly, the SHO of the concerned PS was directed to hold inquiry and submit report, who submitted the same on 07.10.2020, wherein it was held that the disputed thoroughfare is used by the public since long but the respondent have blocked the same, which has created public nuisance. In the light of the inquiry report of the SHO, the respondent was conditionally directed to remove the bearer and open the road and in case of any objection, he may file objection petition in the court for setting aside/modifying the order. The respondent submitted objection petition. Both the counsel for the parties argued the same. Resultantly, the

objection of the respondent was rejected and the conditional

order made earlier was made absolute vide order Dated: 07.02.2021.

The respondent filed a criminal revision in the court of learned ADJ-II, Orakzai, which by its order Dated:03.03.2021 remanded the same back to this court with directions to decide the same in accordance with the law on merits after recording evidence while the conditional order Dated: 07.02.2020 made by this court was kept intact.

As per the directions of learned appellate court, both the parties were provided ample opportunity to produce

  
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their respective evidence, who both submitted their respective lists of witnesses.

The complainant produced witnesses, in whom the one Israfeel appeared as CW-01 but inadvertently it has been mentioned as PW-01, who stated that there are 03 main thoroughfares of the Qoum Mula Khel, the one is from Dabori to Kharki Talab, the second is from Dabori to Baran Talab and the third is from Dabori to Roonre Talab and the disputed thoroughfare is the one which is from Dabori to Kharki Talab but admitted in his cross-examination that there is a metaled road from Dabori to Kharki Talab and which is open for the traffic. That the dispute is on a kacha thoroughfare and that the same is the ownership of the respondent. That there is no bearer in the afore-mentioned 03

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main thoroughfares. That the main road is going through the houses of the parties and the same is open for public traffic.

That the disputed thorough fare is the property of the respondent situated in front of his house. That no one except the complainant has filed any complaint regarding the disputed thoroughfare. Further, Mr. Abdu Sattar appeared as CW-02 but inadvertently it has been mentioned as PW-02, who stated that 03 thoroughfares, come out of Dabori and that the disputed thoroughfare go through Jalo and a hill and finally reaches Ghoz Tang. But admitted in his cross-

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examination that the aforesaid 03 thoroughfares are both metaled and kacha and he does not know anything regarding any dispute. That he does not know Kameen Gul and has not seen his house and landed property. That no one has blocked the aforesaid 03 thoroughfares. Further, Mr. Zareem Khan appeared as CW-03 but inadvertently it has been mentioned as PW-03, who stated that the disputed thoroughfare was a public thoroughfare since long but the respondent have blocked the same. But admitted in his cross-examination that the thoroughfare leading toward Ghiljo is open and that except the present complainant, no one have filed any complaint regarding blockage of public thoroughfare. That the property adjacent to the disputed thoroughfare is the ownership of the respondent. Further, Mr. Seena Gul appeared as CW-04 but inadvertently it has been mentioned as PW-04, who stated that there are 03 public thoroughfares coming out of Dabori in which one of them has been blocked by the respondent. But, admitted in his cross-examination that the aforesaid 03 public thoroughfares are open for the general public. At the end, Mr. Muhammad Haneef, the complainant himself appeared as CW-05 but inadvertently it has been mentioned as PW-05, who narrated the same story as in the complaint but admitted in his cross-examination that

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no one except him have filed complaint regarding the blockage of the disputed thoroughfare.

In order to counter the claim of the complainant, the respondent produced only one witness, as he himself appeared as RW-01, who fully denied the claim of the complainant by alleging that the disputed thoroughfare is his private property and not a public thoroughfare. He has been cross-examined but nothing tangible has been extracted out of him during cross-examination.

Arguments heard and record perused.

After hearing of arguments and perusal of the record, I am of the opinion that **Firstly**, the complainant failed to establish that the disputed thoroughfare is a public thoroughfare rather his witnesses have admitted that there are 03 public thoroughfares available in the vicinity which are open and used by the general public, **Secondly**, the complainant also failed to establish the fact that he has been using the disputed thoroughfare since long and **Thirdly**, the complainant also failed to establish that by blocking the alleged thoroughfare, the respondent have created public nuisance.

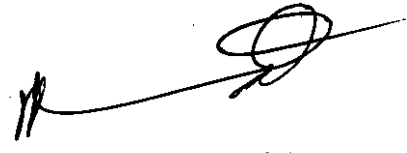
Thus, in the light of the aforesaid findings, the instant complaint is **dismissed being meritless** and the

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conditional order already made on 07.10.2020 is hereby  
**withdrawn.**


File be consigned to the record room after its  
necessary completion and compilation.

**Announced**  
08.03.2023

  
**(Rehmat Ullah Wazir)**  
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**CERTIFICATE**

Certified that this judgment of mine consists of six (06) pages,  
each has been checked, corrected where necessary and signed by me.

  
**(Rehmat Ullah Wazir)**  
Senior Civil Judge/JM,  
Orakzai (at Baber Mela)