



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT CHUKA**

**JUDICIAL REVIEW NO. 05 OF 2017**

**IN THE MATTER OF AN APPLICATION FOR JUDICIAL**

**REVIEW IN THE NATURE OF CERTIORARI**

**AND**

**IN THE MATTER OF SECTION 8 (2) AND 9 OF THE LAW REFORM ACT**

**AND**

**IN THE MATTER OF LAND DISPUTES TRIBUNAL CASE NO. 03 OF 2011**

**AS READ IN CHUKA PRINCIPAL MAGISTRATES LDT NO. 32 OF 2011**

**AND**

**IN THE MATTER OF L.R. NO. MWIMBI/MURUGI/1102**

**BETWEEN**

**LEONARD RIUNGU.....1<sup>ST</sup> APPLICANT**

**FRANKLINE KIRIMI.....2<sup>ND</sup> APPLICANT**

**VERSUS**

**THE DISTRICT COMMISSIONER MAARA DISTRICT.....RESPONDENT**

**M'ARACHI NJERU.....INTERESTED PARTY**

**RULING**

1. This application is dated **3<sup>rd</sup> April, 2018** and the applicant states that it has been brought to court under Article 159 of the Constitution of Kenya, Section 3 and 3A of the Civil Procedure Act and any other enabling provisions of the law.
2. The application seeks the following orders:
  1. That this honourable court be pleased to lift all restrictions placed over LR. NO. MWIMBI/MURUGI/1102.
  2. That costs be provided for.
3. It is supported by the affidavit of M'Rachi Njeru, the applicant, and has the following grounds:
  1. That the applicant is the decree holder in this matter.

2. That the respondents filed a judicial review vide Miscellaneous Civil Application No. 62 of 2011 which has since been dismissed.
3. That the applicant is now desirous of executing the orders of this court.
4. That the applicant cannot execute the said orders if the restrictions are not lifted.
5. That it is only just, fair and equitable that this application is allowed.

4. In his supporting affidavit the applicant states as follows:

**“I, M’RACHI NJERU of P. O. Box 87-60401, CHOGORIA** do hereby make oath and state as follows:

1. That I am the applicant herein well versed with the matters deponed to herein and therefore competent to make and swear this affidavit.
2. That we had land dispute before the tribunal and the tribunal made an award which was read in the Principal Magistrate’s Court at Chuka on 26<sup>th</sup> July, 2017 and right of appeal for thirty days was explained to the parties. Annexed and marked MN1 (a) and (b) are copies of proceedings and award in LDT No. 32 of 2011 and the order of Principal Magistrate’s Court Chuka LDT No. 32 of 2011.
3. That being dissatisfied with order of this court the defendant/respondent opted to file an appeal (sic) but rather a judicial review vide Miscellaneous Application No. 62 of 2011 which was later transferred to Chuka as Judicial Review No. 5 of 2017 and the same has now been dismissed. Annexed and marked MN2 is a copy of the ruling.
4. That what is now pending is execution of the order of this court and I have been unable to execute the same as there are restrictions placed over LR NO. MWIMBI/MURUGI/1102. Annexed and marked MN3 is a copy of the official search.
5. That unless the said restrictions are lifted I am unable to execute the orders of this court.
6. That it is only fair, just and equitable that this application is allowed.
7. That all what is deponed to herein above is true to the best of my knowledge, information and belief.

5. Mr. Mungai, for the applicant, told the court that the application seeks to put into full effect the ruling of this court which dismissed the main motion on 19<sup>th</sup> September, 2017. I agree.

6. In the circumstances, this application is allowed in terms of prayers 1 and 2.

**Delivered in open court at Chuka this 23<sup>rd</sup> day of April, 2018** in the presence of:

CA: Ndegwa

Mungai for the Applicant

**P.M. NJOROGÉ**

**JUDGE**