



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT CHUKA

CHUKA ELCCONSTITUTION PETITION CASE NO. E002 OF 2020

IN THE MATTER OF MARIMANTI MAGISTRATES COURT CRIMINAL CASE NO. 540 OF 2020

AND

IN THE MATTER OF ARTICLES 2(1), 3(1), 10, 19, 20, 21, 22, 23, 25, 27, 48, 50, 157, 165(6) AND 245 OF THE CONSTITUTION OF KENYA

AND

IN THE MATTER OF VIOLATION OF ARTICLES 50(2) (C) AND 40 OF THE CONSTITUTION OF KENYA

AND

IN THE MATTER OF THE LAND ADJUDICATION ACT, CAP 284 LAWS OF KENYA

BETWEEN

WILLIAM MUTUURA KAIRIBIA.....1ST PETITIONER

FELIX GITONGA NTHIGA MUTUURA.....2ND PETITIONER

VERSUS

INSPECTOR GENERAL OF POLICE.....1ST RESPONDENT

DIRECTOR OF PUBLIC PROSECUTIOS.....2ND RESPONDENT

SENIOR PRINCIPAL MAGISTRATE, MARIMANTI.....3RD RESPONDENT

THE COUNTY LAND REGISTRAR THARAKA NITHI

COUNTY.....4TH RESPONDENT

THE COUNTY SURVEYOR THARAKA NITHI

COUNTY.....5TH RESPONDENT

COUNTY GOVERNMENT OF THARAKA NITHI.....6TH RESPONDENT

THE DIRECTOR OF SURVEYS.....7TH RESPONDENT

ELIJAH MUTHURI MURIUNGI.....8TH RESPONDENT

DISTRICT LAND ADJUDICATION AND SETTLEMENT

OFFICER.....9TH RESPONDENT

RULING

1. Mr. Atheru, the 8th respondents' advocate orally asked the court to vacate interim orders issued by this court. For this assertion, he relied on the failure by the petitioners not to serve their submissions concerning his Preliminary Objection dated **15th December, 2020** within the time stipulated by the court.

2. Advocate Atheru told the court that those interim orders were issued per incurium because the petitioners had failed to disclose to the court that the **8th respondent** had been in possession of the suit property following a decision of this court in **Chuka ELC No. 8 of 2018**. Mr. Atheru told the court that the refusal to serve apposite papers upon the **8th respondent** was to allow the petitioners to continue enjoying the interim orders.

3. The petitioners excuse for not serving the apposite papers within the stipulated time was judicially and veritably risible. Their advocate told the court that when they went to serve the said papers, they were told that the **8th respondent's advocate** had gone to court. Surely, there is no requirement that an advocate be served personally. They should have served his employees and left the papers in his office. I do not accept the petitioners' explanation.

4. I am tempted to agree with the **8th respondent's** advocate that the petitioners want to delay the hearing of the Preliminary Objection as they continue to enjoy the extant interim orders.

5. In the circumstances, I issue the following orders:

a) Interim orders issued on **30.11.2020** and extended on **16.12.2020** and further extended on **1.2.2021** are hereby vacated.

b) All parties are to serve the other parties with all the apposite documents **within 7 days of today**.

c) By consent of counsels present, **directions** will be taken on **10.3.2021**.

Delivered in open Court at Chuka this 15th day of February, 2021 in the presence of:

CA: Ndegwa

M/s Macheru for the petitioners

Sichanya for the 6th respondent

Atheru for the 8th respondent

HON. JUSTICE (Dr.) P. M. NJOROGE,

ELC JUDGE.