



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT CHUKA**

**CONSTITUTIONAL PETITION NO. E001 OF 2020**

**IN THE MATTER OF ARTICLE 22, (3), 23 AND 165 (3) (b) OF THE CONSTITUTION OF KENYA, 2010**

**AND**

**IN THE MATTER OF CONSTITUTION OF RULES UNDER ARTICLES 40 AND 47 OF THE CONSTITUTION OF KENYA**

**AND**

**IN THE MATTER OF THE CONSTITUTION OF KENYA (PROTECTION OF RIGHTS AND FUNDAMENTAL FREEDOM) PRACTICE AND PROCEDURE RULES, 2013.**

**BETWEEN**

**DANIEL MUTEGI MWENDA.....PETITIONER**

**VERSUS**

**JOHN KATHENYA KAIBIRU.....1<sup>ST</sup> RESPONDENT**

**THE CABINET SECRETARY, LANDS AND  
PHYSICAL PLANNING – (SUED THROUGH  
THE DEPUTY COUNTY COMMISSIONER –**

**THARAKA SUB COUNTY).....2<sup>ND</sup> RESPONDENT**

**THE DISTRICT LAND REGISTRAR**

**(THARAKA SUB COUNTY).....3<sup>RD</sup> RESPONDENT**

**THE DISTRICT LAND SURVEYOR**

**(THARAKA SUB COUNTY).....4<sup>TH</sup> RESPONDENT**

**THE HON. ATTORNEY GENERAL.....5<sup>TH</sup> RESPONDENT**

**RULING**

1. This application is dated 25<sup>th</sup> November, 2020. The application seeks the following orders:

1. This application be certified urgent and service thereof be dispensed with in the first instance.
2. There be an order of inhibition upon LR NO. North Tharaka/Marimanti/3342 to prevent any subdivision, partition, transfer, alienation or any dealing whatsoever with the same pending the inter-parties hearing and determination of this application.
3. There be an order of inhibition upon LR No. North Tharaka/Marimanti/3342 to prevent any sub division, petition, transfer,

alienation or any dealing whatsoever with the same pending the hearing and trial determination of this petition.

4. Costs for this application be provided for.

5. The court do make any other or such better orders which it may deem fit to grant in the circumstances.

2. The application has the following grounds:

i) The subject matter is in danger of alienation since the 1<sup>st</sup> respondent is in the process of disposing it by sale to third parties.

ii) The 1<sup>st</sup> respondent has continuously invoked the illegal title of the suit land to harass the petitioner/applicant by placing unfounded allegations to the OCS (Marimanti Police Station) that the applicant is maliciously damaging properties on the suit land.

iii) If the suit land is alienated, the interests of the applicant over the same will be defeated and/or seriously compromised.

iv) Notwithstanding that the suit land is an offshoot of the illegal partition of LR NO. North Tharaka/Marimanti/1764, there has been no physical subdivision on the ground but the 1<sup>st</sup> respondent is using the alleged subdivision to unlawfully harass the petitioner/applicant.

3. All parties were represented on **15<sup>th</sup> December, 2020** when the matter was fixed to be heard interpartes on **26<sup>th</sup> January, 2021**.

4. The parties were not in court on **26<sup>th</sup> January, 2021**.

5. I note that prayer 1 in the application is spent.

6. Although the parties did not come to court on **26<sup>th</sup> January, 2021**, I find it necessary to have the suit property preserved pending hearing and determination of this petition.

7. As the parties were not in court when this application was slated to be heard, I issue no order as to costs regarding this application.

8. In the circumstances, prayer 3 in the application is granted.

9. Parties will come to court for **directions** on **2<sup>nd</sup> March, 2021**.

10. Orders accordingly.

**Delivered in open court at Chuka this 8<sup>th</sup> day of February, 2021** in the presence of:

CA: Ndegwa

Parties not in court

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

**ELC JUDGE.**