



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT CHUKA

CHUKA ELC CASE NO. E001 OF 2020

ESTHER MUGURU NJERU NJOROGE MICHENIPLAINTIFF

VERSUS

IAN KARANI KAMUNDE.....1ST DEFENDANT

FRANCIS KAMUNDI MUNYUA.....2ND DEFENDANT

THE LAND REGISTRAR THARAKA NITHI COUNTY....3RD DEFENDANT

RULING

1. On 8th December, 2020, the advocates representing the parties asked the court to confirm the interim orders granted on 14th October, 2020 and the application dated 7th October, 2020 be deemed as heard and determined. The parties, by consent, agreed that the hearing of the Main suit takes place on 17th March, 2020.

2. On 8th March, 2020, I received a copy of a letter dated 2nd March, 2021 addressed to the firm of Njeru Ithiga & Company Advocates, the defendant's advocates and copied to me. The said letter is reproduced in full herebelow:

NJERU ITHIGA & CO, ADVOCATES &

COMMISSIONER FOR OATHS,

EMCO HOUSE,

3RD FLOOR RM 329,

KENYATTA HIGHWAY,

P. O. BOX 1768-60100,

EMBU.

RE: ELC. CASE NO. E001 OF 2020 ESTHER MUGURU NJERU NJOROGE MICHENI –VS- IAN KARANI KAMUNDI AND 2 OTHERS

We refer to the above captioned matter which has been set down for hearing on 17th March, 2021.

We address this letter to you on the instructions of our client Ester Muguru Njeri Njoroje Micheni, being the plaintiff in the aforesaid matter.

Our client has consulted us as a result of a strong perception which she entertains that she might not receive a fair hearing in the above matter, a view which appears to be shared widely.

The matter appears to have taken a different dimension since the Environment and Land Court issued certain orders which the 1st

respondent before this court has brazenly disobeyed thus sparking off certain unfortunate reactions from him.

Firstly, your client, the 1st respondent herein, Mr. Ian Karani Kamundi, has since made a visit to our client and communicated to her that she is wasting her time in court as the court will be of no assistance to her. Further to the aforesaid your client has indicated that since the first hearing of the matter on **14th October, 2020** where the judge had issued directions that the parties should explore an out of court settlement which our client agreed to but opposed by your client, (refer to Achando – Njeru telephone conversation of **December, 2020** on the same) your client has been to Chuka Law Courts several times and has used a lot of money and he had been told that Hon. Justice Njoroge normally refers cases of this nature to be solved by family members and the matter will stay for long at the court before any determination is made by the court. He further stated that he had talked to some of the judge's classmates and he had been told the same thing. Those remarks are not only contemptuous to the court but demean the very fabric of our constitutional order.

Secondly, your clients even after having been directed by the court that they restrain from doing any of the following acts that is to say evicting, demolishing the plaintiff's houses, selling, leasing, charging or otherwise howsoever interfering with the plaintiff's quiet, peaceful, actual and exclusive possession, cultivation, user, development and enjoyment of the parcel of land known as Title number Kiera/Magutuni/98 pending the hearing and determination of this suit. At the moment your clients have deliberately refused, failed and or neglected to obey this order and they continue to harass the plaintiff. The 1st respondent has gone ahead to collect the rent from one of the shops rented out by the plaintiff and continues to demand that the plaintiff returns the vehicle gifted to her son by the 2nd respondent.

Under the circumstances our client is concerned that she might not get a fair hearing and in particular is concerned that the 1st respondent has alleged that he has an alternative avenue other than the court process to compromise the suit, therefore the court might not be able to objectively and impartially adjudicate on the issues before it. That is the conclusion he intends to pass by your client's conduct.

The client's perception and fear in this regard arise not only from the foregoing and other obvious considerations but also from certain information that she has received and from allegations that have been made to her relating to the statements the 1st respondent has made in relation to the matter in court.

Our client does not know whether the information and allegations referred to above are correct or not, and our client and ourselves are very conscious of the fact that information received, allegations made and rumours are often not true and often over-stated or distorted.

Nevertheless, it is clearly in the interests of justice and in the interests of our client that these concerns be addressed.

Under the circumstances we are ethically and duty bound to write this letter on behalf of our client.

Much of the foregoing falls within the peculiar knowledge of each of your clients. It has therefore become important and in fact imperative that the correct facts be ascertained so that either our client's fears can be allayed or that we can advise her on her further rights and or whatever further steps she may want to take.

Unfortunately, we will be forced to raise these matters in chambers on the next hearing date being **17th March, 2021** and under the circumstances it is with great hesitation and with due respect that this letter is written as the only practical way of addressing the problem.

In an attempt, however, to avoid publication and to avoid impairing the dignity of the court, we have taken the liberty of addressing this letter to the judge of this honourable court personally.

Under the circumstances our client respectfully requires clarity on and information about the aspects formulated below, from your clients.

It is unfortunately unavoidable, that the under mentioned aspects are formulated in the form of questions. We therefore respectfully request that the under mentioned aspects be addressed by your client:

- a. Whether your clients have made improper contact with the court as alleged;
- b. Whether there is any family or personal relationship between any of your clients and the judge in this division.

On our part we have the full confidence of the court and believe that the decision of the court will be based on nothing else except the law. It is also the responsibility of our client and us to guard against anything that may bring the name of the court into disrepute.

In spite of all these happenings we have firm instruction from our client that we shall not make any application for the recusal of the judge as our client and ourselves have full confidence in the judge and we have no doubt in his competence, professional standing and moral probity to deliver justice.

Kindly find our client's letter of complaint attached herein for ease of reference.

Kindly address the question posed herein and revert as we await your response by return.

Thank you.

Yours faithfully,

OKWEH ACHIANDO & CO. ADVOCATES,

C. C.

1.Client

2..Hon. Justice P. M. Njoroge, Chuka

3. On **12th March, 2021**, I received a copy of the reply given by the defendants' advocate which was also copied to me. The letter is reproduced in full herebelow:

OKWEH ACHIANDO & COMPANY ADVOCATES

COMMISSIONER FOR OATHS,

P. O. BOX 43799-00100

NAIROBI.

Dear Sir,

RE: CHUKA ELC CASE NO. E001 OF 2020

ESTHER MUGURU NJERI NJOROGE MICHENI VS IAN KARANI KAMUNDI & 2 OTHERS

We refer to the above matter and your letter dated 2.3.2021 sent under "confidential cover" and allegedly copied to Hon. Justice P. M. Njoroge.

We have taken instructions from our client IAN KARANI KAMUNDI who is in Germany on the very grave contents and allegations of the said letter.

We have instructions to address and reply as follows:

1. That our client (1st defendant) has not disobeyed any court orders and if your client has any evidence to the contrary, you have not given any reason why you have not filed any contempt of court proceedings on behalf of your client against ours.
2. That your client's allegations that it is our clients who are opposed to an out of court settlement is not true. It is your client who has blatantly refused to several requests by Prof. Justus Karuki Munyua who is the younger brother of the 2nd defendant to avail herself and sit down as family members and reach an amicable out of court settlement over the dispute before the court.
3. That our client (1st defendant) denies categorically visting Chuka Law Courts several times (other than the days fixed by the court) and using a lot of money in an attempt to bribe the trial judge in order to get a favorable determination. He further denies having talked to some unnamed classmates or friends of the Honourable trial judge about the case in court. our client (1st defendant) denies telling yours that he has an alternative avenue other than the court process to compromise the suit and that your client is wasting her time in court.
4. That our client (1st defendant) is a resident of Germany where he is even at the time of writing this letter and has instructed me that he and indeed his aged father (2nd defendant) have no family or personal relationship with the trial judge.
5. That our clients have full confidence with the court and have no reason at all to attempt to bribe their way for any favourable determination. Needless to say, that the allegations raised in your letter are very serious and touching on the personal integrity of the trial Judge. You had professional duty as an officer of the court to verify the truth about the allegations before writing and sending the letter. We are challenging your client to instruct you to file an application for the trial Judge to recuse himself and state on oath the reasons as contained in your letter so that our clients can have a chance to controvert the baseless allegations. Your client cannot instruct you to write that letter imputing the improper conduct of the trial Judge and at the same time state that she has full confidence in the court and decline to file an application for recusal of the trial Judge.

Otherwise what did you intend to achieve by writing the letter?

6. That we are urging the honourable trial Judge to proceed and hear the suit on 17.3.2021 as scheduled and ignore the contents of the letter and treat it with the contempt it deserves.

That is our client's humble response.

Yours faithfully,

NJERU ITHIGA & CO.

ADVOCATES.

C.C

1.Client

2.Hon. Justice P. M. Njoroge including the letter dated 2.3.2021

4. Judicial officers, and more so Judges, do not engage with correspondence with litigants. They pronounce themselves through rulings and other directions. I intend to pronounce myself pellucidly through this ruling.

5. The plaintiff's advocate wants the following issues to be addressed:

a. Whether the defendants have made improper contact with the court as alleged.

b. Whether there is any family or personal relationship between the defendants and the Judge handling this matter.

6. This Judge has never made improper contacts touching on matters before him.

7. This Judge hails from a county in the defunct Central Province. To the best of his knowledge he has no relatives or any personal relationship with the defendants. Indeed he does not have relatives in Tharaka Nithi County or in the greater Meru Region.

8. Having said that, this Judge notes that the Kenyan Judicial Conduct Rules have borrowed extensively from the Bangalore Principles of Judicial Conduct, 2002. These principles are Independence, Impartiality, Integrity, Propriety, Equity of Treatment to all Litigants and Competence and Diligence.

9. On independence, which is one of the cardinal values that a Judge must uphold, value 1.1 of the Bangalore Principles states:

“1.1 A Judge shall exercise the judicial function independently on the basis of the judge's assessment of the facts and in accordance with a conscientious understanding of the law, free of any extraneous influence, inducements, pressures, threats or interference, direct or indirect from any quarter or for any reason.”

10. On integrity, values 3.1. and 3.2 state as follows:

“3.1. A Judge shall ensure that his or her conduct is above reproach in the view of a reasonable observer.”

“3.2. The behaviour and conduct of a Judge must reaffirm the people's faith in the integrity of the Judiciary. Justice must not merely be done but must also be seen to be done.”

11. Value 4.6 which is apposite to propriety states as follows:

“4.6 A Judge like any other citizen, is entitled to freedom of expression, belief, association and assembly, but in exercising such rights, a Judge shall always conduct himself or herself in such a manner as to preserve the dignity of the Judicial office and the impartiality and independence of the Judiciary.”

12. I opine that the allegations made by the plaintiff may raise the perception of possible bias against the plaintiff. In many cases, perception may override the truth. I note that the hearing of this case has not commenced. In my view, the hearing of the case should commence in a court where no veneer of bias, actual or imagined, is expressed by the parties. The hearing of the suit ought to commence on a clean slate. In the circumstances, I will request the Hon. Lady Justice Lucy Mbugua, the ELC Judge at Meru, who is my neighbour, to take over the conduct of this case. I opine that this decision will affirm and re-affirm the peoples' faith in the integrity of the Judiciary, for justice must not only be done but must also be seen to be done.

13. I issue the following orders:

a. This suit is forthwith transferred to the ELC Court, Meru, for hearing and determination.

b. Parties are directed to appear for directions before the Hon. Lady Justice Lucy Mbugua at Meru on **19th April, 2021 at 9.00 am.**

DELIVERED IN OPEN COURT AT CHUKA THIS 17TH DAY OF MARCH, 2021

IN THE PRESENCE OF:

CA: Ndegwa

Okweh Achiando for the plaintiff

Njeru Ithiga for the defendants

P. M. NJORGE,

JUDGE.