



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT CHUKA

ELC CASE NO. E002 OF 2021

PHINEAS NGAKU MURUNGI.....1ST PLAINTIFF
EDWIN KABURU THUURA.....2ND PLAINTIFF
KAMUNDI THUURA.....3RD PLAINTIFF
KITHINJI BARINE.....4TH PLAINTIFF
ASHFORD MUTEKI MURUNGI.....5TH PLAINTIFF
JASPER KIRIA.....6TH PLAINTIFF
EPHANTUS KINYUA KIRIA.....7TH PLAINTIFF

-VERSUS-

RIUNGU KAMINCHI.....1ST DEFENDANT
M'MURUNGI KUNGANIA.....2ND DEFENDANT
KINYUA KAGOGL.....3RD DEFENDANT
KAWIRA M'NDAKA.....4TH DEFENDANT
MURITHI BURURIA.....5TH DEFENDANT
KITHINJI BURURIA.....6TH DEFENDANT
KIRAMA CHABARI.....7TH DEFENDANT
VIRGINIA MURITHI.....8TH DEFENDANT
DAMARIS MUKWANDEGI.....9TH DEFENDANT
KARIUKI BURURIA.....10TH DEFENDANT
CATHERINE MUKWAMUGO.....11TH DEFENDANT
MICHAEL NDUBI.....12TH DEFENDANT
THE DISTRICT LANDS ADJUCATION OFFICER
MAARA SUB COUNTY.....13TH DEFENDANT

DISTRICT SURVEYOR,

MERU SOUTH/ MAARA SUB COUNTY.....14TH DEFENDANT

LANDS REGISTRAR, MERU SOUTH.....15TH DEFENDANT

RULING

1. This Notice of Motion application is dated 8.2.2021 and is brought to court under Section 1A, 1B, 3A and 63(c) and e of the Civil Procedure Act and Article 22, 40, 162 and 165 of the Constitution of Kenya and all other enabling provisions of the law. It seeks the following orders:

1.THAT the application herein be certified as urgent to be heard on priority basis.

2.THAT pending hearing and determination interpartes of the instant application this Court does issue a temporary injunction restraining the Respondents/Defendants, their agents, their representatives, their servants and/or anybody acting at their behest from in any manner whatsoever dealing with the parcels of land known as PLOT NO. 1480 AND PLOT NO. 1977, LOWER EAST MAGUTUNI and/or land parcels **LR. NO. MWIMBI/L.E. MAGUTUNI/3712, 3713, 3714, 3715,3716, 3613, 3614, 3615, 3616, 3617, 36183619, 3620, 3621, 3622, 3623, 3624, 2381 and 1977** the properties of the plaintiffs herein.

3.THAT pending hearing and determination of the suit herein the Defendants herein either by themselves, their agents, servants, representatives and/or anybody else whomsoever acting at their behest be restrained from in any manner dealing with the parcel of land known as PLOT NO. 1480 and PLOT NO. 1977, LOWER EAST MAGUTUNI and/or land parcels **LR. NO. MWIMBI/L.E. MAGUTUNI/3712, 3713, 3714, 3715,3716, 3613, 3614, 3615, 3616, 3617, 36183619, 3620, 3621, 3622, 3623, 3624, 2381 and 1977** the properties of the plaintiffs herein.

THAT costs of this application be provided for.

2. The application has, inter alia, the following grounds:-

(i) THAT PLOT NO. 1480 & 1977 LOWER EAST MAGUTUNI were originally held in trust by one WILFRED MURUNGI (DECEASED) for the benefit of the beneficiaries, the Plaintiffs herein who are extended members of the family of the Late M'THUURA NJURI (Deceased).

(ii) THAT the said parcels of land were Clan/ancestral land that were distributed to various members of the said family.

(iii) THAT the family of M'THUURA NJURI had appointed the Late WILFRED MURUNGI MBOROKI as their trustee to receive and hold the parcels of land in their behalf before subdividing and distribution to respective members.

(iv) The only dispute that was there was settled on 1st October, 2015 and no appeal has ever been lodged.

(v) During a family meeting done on 20th October, 2015 the subdivision of PLOT No. 1480 and PLOT NO.1977, LOWER EAST MAGUTUNI REGISTRATION SECTION was determined.

(vi) THAT the various members of the family of M'THUURA NJURI were allocated various sizes of parcels from both PLOT NO. 1480 and PLOT NO.1977 and their respective numbers issued thereof.

(vii) **THAT** the plaintiffs herein are the lawfully registered and/or absolute owners of **LR. NO. MWIMBI/L.E. MAGUTUNI/3712, 3713, 3714, 3715,3716, 3613, 3614, 3615, 3616, 3617, 3618, 3619, 3620, 3621, 3622, 3623, 3624, 2381 and 1977** emanating from the subdivision of **PLOT NO. 1480 and PLOT NO. 1977 Lower East Magutuni Registration Section** amongst the family members.

(viii) THAT the Lower East Magutuni Registration Section, SHEET5A – REGISTRY INDEX MAP clearly identifies the said parcels of land although the boundaries on the ground remained unascertained.

(ix) THAT since the year 2017 when the Applicants/plaintiffs obtained the registration numbers of the respective parcels of land the subject of the suit herein the respondents/Defendants have been unlawfully and violently frustrating, obstructing and/or thwarting all attempts and efforts by the Applicants/Plaintiffs to have the lands surveyed for demarcations to identify, define and ascertain boundaries for their respective parcels of land.

(x) THAT all demands and efforts to have the Respondents/Defendants who are in illegal occupation of the said parcels of land cede and vacate from the said parcels of land have been violently resisted by the Respondents/Defendants.

(xi) THAT even after a meeting on 2nd January, 2019 with the area DCC (Deputy County Commissioner) and an order on the illegal occupants to vacate the Respondents have willfully refused to yield to such orders and demands and the Respondents/Defendants have continued in their illegal occupation of the suit property.

(xii) THAT a surveyor came in and tried to undertake surveys on PLOT No. 1480 and PLOT NO. 1977, LOWER EAST MAGUTUNI REGISTRATION SECTION but they were violently frustrated/blocked by the Respondents/ Defendants for no lawful cause, justification and/or excuse.

(xiii) THAT the Respondents/ defendants herein have unlawfully and bereft of any justification whatsoever been frustrating and blocking all efforts to survey and establish demarcations on PLOT NO. 1480 and PLOT NO. 1977 Lower East Magutuni Registration Section.

(xiv) THAT the Respondents/Defendants have been interfering with the plaintiffs' property rights in blatant breach and infringement of the provisions of Article 40 of the Constitution of Kenya, 2010 through illegal and/or forceful occupation of the suit property.

(xv) THAT the Defendants have been violently and unlawfully obstructing the Plaintiffs from accessing and or entering into the suit land which is their lawful property.

(xvi) THAT the obstruction of the surveyors, illegal occupation and use of the said property by the Respondents and the loss and damages occasioned against the applicant can not be adequately compensated save for the orders sought hereof.

(xvii) THAT it is in the interest of justice that the orders and reliefs sought be granted by this Honorable Court.

Dated at Chuka this8thday of.....February.....2021

WAKLAW ADVOCATES

FOR THE PLAINTIFFS

3. On **10th March, 2021**, the parties proffered a consent for adoption by the court. The consent reads:

CONSENT

BY Consent of all the parties' advocates it is hereby agreed that:

1. Conservatory orders do hereby issue in respect of the suit properties prohibiting any activities that may either damage or cause waste on the suit properties.
2. That the application dated 8.2.2021 is hereby compromised upon the above terms.
3. That costs be in the cause.

Signed this 10th day of March, 2021

1.Kirimi Muturi Advocate for the plaintiffs

2,Mwenda Mwarania advocate for the 1st to 12th defendants

3.Kiongo, advocate for 13th – 15th defendants

4. This consent is adopted as an order of this court.

5. This application is deemed heard and determined with costs to be in the cause.

Delivered in open Court at Chuka this 10th day of March, 2021 in the presence of;
CA: Ndegwa

Kirimi Muturi for all the plaintiffs

Mwenda Mwarania for 1st to 12th Defendants

Kiongo for AG for 13th, 14 & 15th Defendants

P. M. NJOROGE,

JUDGE.