



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT CHUKA

MERU ELC CASE NO. 59 OF 2005

PHYLLIS KAMINCIA.....1ST PLAINTIFF

REBECCA MWITI MONGORWE.....2ND PLAINTIFF

JULIA NCHENGE.....3RD PLAINTIFF

VERSUS

M'RUNGWENTO MBOGORI.....1ST DEFENDANT

DAVID SILAS SAFARI.....2ND DEFENDANT

JOSEPH KITHINJI KANGI.....3RD DEFENDANT

RULING

1. This ruling is in respect of the application dated 17.12.2020, which was filed by the plaintiffs. The respondents have not opposed the same. The plaintiffs/applicants urge the court to review the judgment delivered herein on 25.4.2019 in terms of acreage and settlement on the ground.

2. In the judgment, the court had directed the 4 plaintiff's to share the original parcel no. Abothuguchi/Gaitu/69 in 4 equal portions. The court had awarded each plaintiff 2.6 acres out of the 4.1 hectares (4.21 ha x 2.471 acres = 10.4 acres).

3. In the supporting affidavit of Rebecca Mwiti (the 2nd plaintiff), she contends that the plaintiffs have agreed to share the land as follows:

- Phylis Kamincha 2 acres
- Ruth Nkuene 2 acres
- Julia Nchenge 2 acres
- Rebecca Mwiti 4 acres.

4. In the case of **Nuh Nassir Abdi v. Ali Wario & 2 others (2013)e KLR EP No.6 of 2013** G.V. Odunga J, observed that:-

“A decision whether or not to vary, set aside or review earlier orders was an exercise of judicial discretion and the court could only exercise such discretion if so to do would serve useful purpose...”

5. Thus ultimately, this court has discretion on whether to allow the application even if the same is unopposed. It has been averred that the parties are in agreement on what each applicant will be entitled to. However, this court is left with questions to which answers have not been provided. To start with, the land is 10.4 acres but the proposed agreement totals to 10 acres. What is the fate of the balance of 0.4 acres?

6. Secondly, the court cannot help but be cognizant of the fact that despite it being averred in the supporting affidavit that the 2nd applicant has authority to swear the said affidavit on behalf of the other applicants, the said authority has not been availed.

7. Thirdly, the 2nd applicant just so happens to get 4.0 acres in the new agreement which is double of what the other applicants will be getting!

8. For the reasons cited herein, and this being an alleged post judgment consensus, then I am hesitant to allow the application in absence of further verification. In the circumstances, I decline to give a final decision in respect of the application. Instead, I direct the 4 parties/plaintiffs to appear before this court to confirm their claims.

DATED, SIGNED AND DELIVERED AT MERU THIS 14TH DAY OF APRIL, 2021

HON. LUCY. N. MBUGUA

ELC JUDGE

ORDER

The date of delivery of this Ruling was given to the advocates for the parties through a virtual session via Microsoft teams on 2.2.2021. In light of the declaration of measures restricting court operations due to the *COVID-19 pandemic* and following the practice directions issued by his Lordship, the Chief Justice dated 17th March, 2020 and published in the Kenya Gazette of 17th April 2020 as Gazette Notice no.3137, this Ruling has been delivered to the parties by electronic mail. They are deemed to have waived compliance with order 21 rule 1 of the *Civil Procedure Rules* which requires that all judgments and rulings be pronounced in open court.

HON. LUCY N. MBUGUA

ELC JUDGE