



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT CHUKA

CHUKA ELC CIVIL APPEL CASE NO. 12 OF 2019

GITONGA NYAGA BOORE.....APPELLANT/APPLICANT

VERSUS

NYAGA BOORE KANYORO.....RESPONDENT

RULING

RULING EXPLAINING SUMMARY REJECTION OF INTENDED APPEAL IN TERMS OF SECTION 79 B OF THE CIVIL PROCEDURE ACT On 2nd March, 2020 the intended appellant filed a chamber summons application dated 28th February, 2020 which sought the following orders:

1. That due to the nature and urgency, the instant application be heard ex parte save for interparte hearing.
 1. That the orders of inhibition inhibiting all dealings in respect of LR Mwimbi South Mugumango 34 do issue pending the hearing and final determination of the intended substantive suit by the applicant and others having licensee interest on the suit land.
 2. That the lower court orders of 10th July, 2019 Chuka Chief Magistrate issued ex parte be vacated and the caution which was registered on the suit land be reinstated.
 3. That the respondent be condemned to pay cost for and incidental to the instant suit.
2. The application had no supporting affidavit.
3. When the application was poised for interpartes hearing on 7th April, 2020, the intended appellant did not come to court. He had also not provided any evidence that the respondent had been served. On 7th April, 2020, The court delivered the following ruling:

RULING

1. This court delivered the following ruling on 19th March, 2020.

RULING

2. This application states that it has been brought to court under section 128(1) of the Registered Land Act (sic), Section 3A of the Civil Procedure Act, Order 1 Rule 17 of the Civil Procedure Rules and all other enabling provisions of the law.

3. The application seeks the following orders:

1. That due to the nature and agency (sic), the instant application be heard ex-parte saves (sic) for inter parte hearing.
2. That the orders of inhibition inhibiting all dealings in respect of LR Mwimbi South Mugumango 34 do issue pending the hearing and final determination of the intended substantive suit by the applicant and others having licensee interest on the suit land.
3. That the lower court orders of 10th July, 2019 Chuka Chief Magistrate issued ex-parte be vacated and the caution which

was registered on the suit land be reinstated.

4. That the respondent be condemned to pay cost for and incidental to the instant suit.

4. The application has the following grounds:

a. That the order dated 10th July, 2019 in the lower court was granted ex-parte contrary to law.

b. That the suit land in which the applicant cautioned is highly susceptible to be disposed of to the third party to defect (sic) the outcome of the intended suit by the applicant.

c. That the interest of the applicant in the suit land is highly jeopardized due to court orders of 10.7.2019.

d. That the applicants (sic) stand to suffer irreparable loss and damage if the orders sought in the instant application is (sic) not granted.

5. The application has no supporting affidavit.

6. A certificate of urgency dated **16th December, 2019** indicates that the applicant had filed an application dated **16th December, 2019**. That application is not in the court file.

7. After perusing the application and all attendant filings, it is ordered as follows:-

a. The applicant to serve the Memorandum of Appeal and accompanying documents AND this application upon the respondent within 14 days of today.

b. This application will be heard interpartes on **7th April, 2020** if courts will have resumed normal operations.

Delivered in chambers this 19th day of March, 2020 in the presence of:

CC: Ann

Parties not present

P. M. NJOROGE,

JUDGE

8. When the matter was slated for interpartes hearing on **7th April, 2020**, the parties were not in court.

9. In the circumstances, the following orders are issued:

a. The applicant to serve the Memorandum of Appeal, all accompanying documents and this court's Ruling delivered on **19th March, 2020** upon the respondent within **14 days of today**.

b. The application will be heard interpartes on **5th May, 2020** if the courts will be operating, and this decision has been informed by the existing corona virus crisis.

Delivered in open Court at Chuka this **7th day of April, 2020** in the presence of:

CA: Ndegwa

Parties absent

P. M. NJOROGE,

JUDGE.

4. **On 5th May, 2020** when the court had fixed interpartes hearing, the intended appellant was not in court. Also there was no evidence that he had served the intended respondent. This court dismissed his application dated 28th February, 2020.

5. I have perused the proceedings in the lower court. It is my very carefully considered opinion that I find no sufficient ground to interfere with the lower court's decision which the intended appellant impugnes.

6. In the circumstances, I have summarily rejected the intended appeal.

Delivered in open Court at Chuka this 5th day of May, 2020 in the presence of:

CA: Ndegwa

Parties absent

P. M. NJORGE,

JUDGE.