



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT CHUKA

CHUKA ELC CASE NO. 112 OF 2017

FORMERLY MERU ELC 147 OF 2009

ROYFORD RIUNGU KUURA.....1ST PLAINTIFF

WASHINGTON KIRIMI KUURA.....2ND PLAINTIFF

CHARLES NYAGA KUURA.....3RD PLAINTIFF

VERSUS

M.KUURA M'RIRIA.....1ST DEFENDANT

TURA KARINGURI.....2ND DEFENDANT

ATTORNEY GENERAL.....3RD DEFENDANT

RULING

1. This application is brought to court under section 80, 1A, 1B & 3A of the Civil Procedure Act, Order 9 Rule 9 & Order 45 Rule 1 of the Civil Procedure Rules and all the enabling provisions of the law.

2. The application is dated 5th July, 2019. It seeks the following orders:

- 1) THAT this Honourable Court be pleased to certify this application urgent and to hear it *ex-parte* in the 1st instance.
- 2) THAT the Honourable Court be pleased to allow the Law Firm of M/S **THURANIRA ATHERU & CO. ADVOCATES** to come on record for the 1st Defendant in place of M/S KIAUTHA ARITHI & CO. ADVOCATES.
- 3) THAT there be stay of execution of the decree/judgment and all consequential orders herein pending the *inter partes* hearing of this application.
- 4) THAT the Honourable Court be pleased to review by way of setting aside the judgment/decree delivered on/dated **19.03.2018** and all consequential Orders made thereto in this suit.
- 5) THAT the 1st Defendant's Replying Affidavit to the Originating Summons filed on 22.12.2009 and Witness Statement dated 13.2.2018 and filed on 14.2.2018 be considered and the 1st Defendant and his witnesses be heard before the court delivers its judgment.
- 6) THAT this Honourable Court be pleased to grant such further or better orders as will meet the ends of justice.
- 7) THAT the costs of this application be provided for.

3. The application has the following grounds:

- a) THAT there is mistake or error apparent on the face of the record.
- b) THAT the 1st Defendant is aggrieved by the decree/judgment herein which if allowed to stand the applicant will be condemned

unheard and suffer substantial loss.

c) THAT the subject matter herein is land in which the 1ST Defendant and his family have lived for 82 years and if executions (sic) takes place the 1st Defendant and his family will be evicted and suffer irreparable loss.

d) THAT the 1st Defendant was never informed of the hearing date of this case before it proceeded in his absence and judgment rendered.

e) THAT the 1st Defendant has never been heard and is desirous of being heard.

f) THAT the 1st Defendant should not be condemned for the mistake of his counsel who misled the court and did not point to the Court material evidence already on record and in favour of the Applicant.

g) THAT the 1st Defendant only came to know of the judgment herein long after it was delivered through a friend who was in court and heard his name being mentioned when judgment was being pronounced.

h) THAT execution is imminent.

4. At the ex parte stage, Mr. Atheru for the 1st defendant asked the court to grant prayers 2 and 3.

5. I grant prayer No. 2 to allow the new advocates to come on board. I decline to grant prayer 3. This prayer will be canvassed during inter partes hearing of the application.

6. The parties will be **heard inter partes** on **17th July, 2019**.

7. It is so ordered.

Delivered in open Court at Chuka this 9th day of July, 2019

in the presence of:

CA: Ndegwa

Atheru for the Applicant

P.M. NJOROGI

JUDGE