



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT CHUKA**

**CHUKA ELC CASE NO. 192 OF 2017**

**FORMERLY CHUKA CM'S CIVIL CASE CASE NO. 72 OF 2018**

**FABIAN MUNGORI AMANJA..... PLAINTIFF**

**VERSUS**

**JOSEPH MURUKI KAIBIRU.....1<sup>ST</sup> DEFENDANT**

**ISAAC MAGAMBO KATHIGA.....2<sup>ND</sup> DEFENDANT**

**RULING**

**1. This Ruling emanates from a ruling delivered by the Hon. J. M. Njoroge,**

**CM, Chuka. The ruling is reproduced in full herebelow.**

**REPUBLIC OF KENYA**

**IN THE CHIEF MAGISTRATE'S COURT**

**AT CHUKA**

**CIVIL CASE NO. 72 OF 2018**

**FABIAN MUNG'ORI AMANJA.....PLAINTIFF**

**VERSUS**

**JOSEPH MARUKI KAIBIRU.....1<sup>ST</sup> DEFENDANT**

**ISAAC MAGAMBO KATHIGA.....2<sup>ND</sup> DEFENDANT**

**RULING**

This is an application dated 1/11/2018 by way of notice of motion brought under order 40 rule 1, 2, 4 (1) of the CPR 2010, section 1A, 1B, 3, 3A of the Civil Procedure Act, cap 21 of the laws of Kenya. The Plaintiff/Applicant prays for:-

- 1) The application be certified urgent and in view of its urgency, the same be admitted to hearing exparte and on priority basis at the first instance.
- 2) An order of temporary injunction be made restraining the defendants/respondents, their agents, servants relatives and representatives from interfering with the plaintiff's possession, use and ownership of the suit land herein measuring 40 x 80 fts and situate within Magumoni market within Tharaka Nithi County by either entering and encroaching thereon, farming, building and or doing anything whatsoever thereon pending hearing and determination of the application Interparties.

3) An order of temporary injunction be made restraining the defendants /respondents, their agents, servants, relatives and representatives from interfering with the plaintiffs' possession, use and ownership of the suit land herein measuring 40 x 80 fts and situated within Magumoni market within Tharaka Nithi County by either entering and encroaching thereon, farming, building and or doing anything whatsoever thereon pending hearing and determination of main suit.

4) The cost of this application be provided for.

The application is supported by the grounds and the affidavit by FABIAN MUNGORI AMANJA who depones to be the owner of the suit land and has made developments and blames the respondent for dumping building materials /stones in preparation to construct on the plot and that the respondents have threatened to evict him from the land.

The defendants/respondents have filed a replying affidavit dated 27/3/2019 and claims to be the owners of plot no 61B and 61 at Mugumoni market, which are different from Magumoni plot no. 273.

The defendants have also filed a **Preliminary objection** dated 27/3/2019 against the suit on the grounds that

- a) The court lacks jurisdiction.
- b) The suit discloses no known cause of action.
- c) The suit is an abuse of the court process.

The court shall firstly deal with the issue of jurisdiction. It is trite law and it has been held on numerous occasions that indeed jurisdiction is everything and without it, a court has no choice except to down its tools. The applicant in the preliminary objection seems to suggest that the court lacks the geographical or territorial jurisdiction to exercise its powers to hear and determine the suit.

It has not been disputed that the subject property/suit land is not situated at Magumoni market, which is within the jurisdiction of this court. However the defendants have argued that the property herein is situated within Mukothima area at Mugumoni market a fact which has not been challenged by the plaintiff/applicant. The pleadings by the plaintiff further state that the respondent live within Mukothima area. The court has looked at the relevant section of the law that details how and places where parties should institute their claims. Section 12 of the Civil Procedure Act provides that for suits regarding immovable properties with claims based on recovery, partition rights and interest and compensation should be initiated.

***“.....where the property is situate in Kenya shall be instituted in the court within the local limits of whose jurisdiction the property is situated.....”***

The court is further guided by the provisions of section 15 of the Act and provides that other suits should be instituted where the defendants reside, or where the cause of action arises. The court further relies on the overriding objective which includes to facilitate the just expeditious, proportionate and affordable resolution of civil disputes. Section 1B (I) requires courts to handle matters for purposes of attainment of

***“a) the just determination of the proceedings;***

***b) The efficient disposal of the business of the court;***

***c) the efficient use of the available judicial and administrative resources;***

***d) the timely disposal of the proceedings, and all other proceedings in the court; at a cost affordable by the respective parties....”***

In my view to proceed with the hearing and determination of the suit would not promote the attainment of the above objectives or the provisions of article 159 of the constitution. The court observes that the court which is within the local limits of the subject matter, and the defendants is Marimanti Senior Principal Magistrate's court. The court therefore finds that it lacks jurisdiction to entertain the matter.

The Preliminary objection dated 27/3/2019 is hereby allowed as prayed and I shall make the following orders.

- a) The file be placed before the Hon. Judge of the Environment and Land Court for directions in accordance to section 18 of the Civil Procedure Act (2010), cap 21 of the laws of Kenya.
- b) There shall be no orders as to costs.

**J. M. Njoroge –CM**

**7/8/2019**

**Court**

Ruling delivered in open court on 7/8/2019 in the presence of

Applicant – Present

Respondent – no appearance.

**J. M. Njoroge-CM**

**7/8/2019**

2. Having perused the ruling and the orders contained therein, it is directed as follows:

a) This suit is hereby withdrawn from Chuka CM's Court and is brought to this court and transferred to Marimanti Law Courts for hearing and determination in accordance with Section 18 of the Civil Procedure Act.

b) No costs are awarded concerning the order given in this ruling

3. Orders accordingly.

**Delivered in Chambers at Chuka this 4<sup>th</sup> day of November, 2019 in the presence of:**

**CA: Ndegwa**

**P. M. NJOROGE,**

**JUDGE.**