



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT CHUKA**

**CHUKA ELC CASE NO. 04 OF 2020**

**ELIAS MICHENI MUGO.....PLAINTIFF**

**VERSUS**

**KENYA URBAN ROADS AUTHORITY (KURA).....1<sup>ST</sup> DEFENDANT**

**THE ADMINISTRATOR CHUKA TOWNSHIP.....2<sup>ND</sup> DEFENDANT**

**THE COUNTY GOVERNMENT OF THARAKA NITHI.....3<sup>RD</sup> DEFENDANT**

**HYPER CONSTRUCTIONS & EQUIPMENT COMPANY LIMITED.....4<sup>TH</sup> DEFENDANT**

**RACHAEL NJERI NDOHO.....5<sup>TH</sup> DEFENDANT**

**THE HONOURABLE ATTORNEY GENERAL.....6<sup>TH</sup> DEFENDANT**

**RULING**

**1. This application is dated 17<sup>th</sup> May, 2021 and seeks the following orders:**

**1. That** the court do grant leave to the plaintiff applicant to amend his amended plaint dated 29<sup>th</sup> June 2020 and in particular introduce the pleadings relating to a registered private surveyor who has taken measurement of plot no.M26 B subdivision of plot no.26 parcel no.227 chuka township and special damages thereto.

**2. The** court be pleased to grant leave to the plaintiff applicant to file a (sic) harmonized compliance documents.

**3. Cost** of this application be provided for.

**2. The** application has the following grounds:

(a) That by a ruling of this court dated 20<sup>th</sup> April 2021, the court denied the applicant his prayer that the district surveyor do visit the locus in quo and establish and beacon the parameters of the suit land plot no.M26 B a subdivision of plot no.M26 parcel no,227 chuka township .

(b) As a consequence of the ruling of this court dated 20<sup>th</sup> April 2021 , the applicant case remain venerable for wants of evidence as to the actual parameters of the suit plot , plot no.M26 B a subdivision of plot no.M26 parcel no,227Chuka townshipviz a viz service road crested moi girls road.

(c) That it will be very difficult for the applicant to demonstrates to the court whether or not plot no.M26 B subdivision of plot no.M26 PARCEL NO.227 chuka township is or is not on the road reserve unless the measurement are taken and beacons fixed by a professional knowledgeable in that field.

(d) That to address the need in number (c) above the applicant on 24<sup>th</sup> April 2021 and 25<sup>th</sup> April 2021 hired the services of a registered private surveyor trading in the style of KANUNU GEOSPATIAL SURVEYORS & CONSULTANTS LTD ,to map and beacon the extent of the suit plot to wit plot no.M26 B subdivision of plot no.M26 Parcel no.227 chuka township .

(e) That on account of the action that the plaintiff applicant has taken in order to establish the actual parameters of the suit plot it has become necessary for the plaintiff applicants to amend his amended pleadings with a view to factoring in the work carried out by the registered private surveyor and the expenses incurred thereto which are special damages, which according to the law must be specifically pleaded and strictly proved.

(f) That if the prayers sought are not granted the applicants stand to suffer prejudice in that his pleadings will be incomplete, particularly noting that a litigant cannot be awarded what he has not prayed for.

(g) That if the orders sought are granted the applicant will put on the table all issues, parties and evidence for adjudication by the honorable court.

(h) That it is trite law that he who alleges must prove and for this reason the court should allow the orders prayed for to enable the applicant establish the parameters of the suit plot namely plot no.M26 B subdivision of plot No.M26 parcel no.227Chuka Township so that the applicant can present evidence to show whether or not plot no.M26 B a subdivision of plot no.M26 parcel no.227 Chuka township is or not on the road reserve.

(i) That the main bond of contention in this suit is whether plot no.M 26 B Subdivision Of Plot No.M26 Parcel No.227Chuka Township is or is not on the road or road reserve and this can only be established by introducing the services of a registered surveyor and in this case KANUNU GEOSPATIAL SURVEYORS & CONSULTANTS LIMITED.

(j) That the nature of the amendment the plaintiff applicant is seeking for is as per the annexed draft amended pleadings.

(k) That due to many amendment and amended compliance documents and introduction of new documents particularly the surveyor report and payment receipt thereof it is expedient and reasonable that the applicants be allowed to file an harmonized compliance documents for ease of reference by the court and defence counsels.

(l) That no party stand to suffer any prejudice in the event that the orders sought are granted by the honorable court.

(m) That if the orders sought are granted the hearing of the main suit will be expedited and the matter determined without delay.

(n) That the orders sought are apt in the circumstances and substantive justice of the case requires that they be granted.

3. When the application was heard on **19<sup>th</sup> May, 2021**, it was not opposed.

4. I find that the application is meritorious.

5. In the circumstances, I issue the following orders:

a) This application is allowed.

b) Costs shall be in the cause.

c) The parties to fully comply with order **11, CPR, within 14 days of today** and to come to court for further **directions on 14.6.2021**.

**DELIVERED IN OPEN COURT AT CHUKA THIS 19TH DAY OF MAY, 2021** in the presence of:

CA: Ndegwa

I.C. Mugo for the Plaintiff

Kiongo for 1<sup>st</sup> to 3<sup>rd</sup> Respondents

**P. M. NJOROGE,**

**JUDGE.**