



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT CHUKA

CHUKA ELC CASE NO. 02 OF 2020

FRANKLINE JAPHET NJIRUPLAINTIFF

VERSUS

KENYA URBAN ROADS AUTHORITY (KURA).....1ST DEFENDANT

THE ADMINISTRATOR CHUKA TOWNSHIP.....2ND DEFENDANT

THE COUNTY GOVERNMENT OF THARAKA NITHI.....3RD DEFENDANT

HYPER CONSTRUCTIONS & EQUIPMENT COMPANY LIMITED....4TH DEFENDANT

RACHAEL NJERI NDOHO.....5TH DEFENDANT

THE HONOURABLE ATTORNEY GENERAL.....6TH DEFENDANT

RULING

1. This application is dated 17th May, 2021 and seeks the following orders:

1.That the court do grant leave to the plaintiff applicant to amend his amended plaint dated 29th 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 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 20thApril 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 20thApril 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 24thApril 2021 and 25th 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 inbide to establish the actual parameters of the suit plot it has

become necessary for the plaintiff applicants to amend his amended plaint 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 Nom26 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 amended plaint.

(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. The application is supported by the affidavit of Franklin Japhet Njiru sworn on **17th May, 2021** which states:

I,FRANKLIN JAPHET NJIRU OF P.O BOX 231 CHUKA in the republic of Kenya make oath and states as follows.

1. That I am the plaintiff applicant herein well versed with the particulars of this suit and hence competent to make this oath.

2. That by a ruling of this court dated 20thApril 2021, the court denied me myprayer 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.**(annexed and marked F.J.N 1 is the ruling dated 20th April 2021).**

3. As a consequence of the ruling of this court dated 20th April 2021, my case remain venerable for wants of evidence as to the actual parameters of the suit plot, plot no.M 26 B a subdivision of plot no.M 26 parcel no,227 chuka township.

4. That it will be very difficult for me 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 or road reserve unless viz a vizmoi girls road unless the measurement are taken and beacons picked(the plot is already surveyed) as per the record of the director of survey).

5. That to address the need in number (4) above on 24th April 2021 and 25thApril 2021 hired the services of a registered private surveyor trading in the style of KANUNU GEOSPATIAL SURVEYORS & CONSULTANT LTD to map and beacon the extent of a suit plot to wit plot no.M26 B subdivision of plot no.M26 Parcel no.227 chuka township and I have spent a bout ksh.50,000 in that excise.**(annexed and marked J.F.J.2 IS a payment receipt for the services).**

6. That on account of the action that I have taken inbide to establish the actual parameters of the suit plot it has become necessary forme to amend my amended plaint 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.

7. That if the prayers sought are not granted I stand to suffer prejudice in that my pleadings will be incomplete ,particularly noting that a litigant cannot be awarded what he has not prayed for.

8. That if the orders sought are granted I will put on the table all canvassed issues ,parties and evidence for adjudication by the honorable court .

9. 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 me establish the parameters of the suit plot namely plot no.M26 B SUBDIVISION OF PLOT Nom26 parcel no.227 chuka township so that I can present evidence to show whether or not plot no.M26 B a subdivision of plot no.m26 parcel no.227 chuka township is on the road or not on the road reserve.

10. That the main bond of contention in this suit is whether plot no.M 26 B SUBDIVISION OF PLOT NO.M26 PARCEL NO.227 chuka 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.

11. That the nature of the amendment I am seeking for is as per the annexed draft amended amended plaint.**(annexed and marked F.J.N.3 is draft amended amended plaint).**

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

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

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

15. That the orders sought are apt in the circumstances and substantive justice of this case requires that the orders be granted.

16. That all which is deponed herein is true to the best of my knowledge belief and information.

4. When the application was heard on **19th May, 2021**, it was not opposed.

5. I find that the application is meritorious.

6. 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 1st to 3rd Respondents

P. M. NJORGE,

JUDGE.