



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT CHUKA

MERU ELC APPEAL CASE NO. 44 OF 2018

JULIUS KILEMI MAITAIAPPELLANT

VERSUS

SILAS MILANYI MAITAI..... 1ST RESPONDENT

JOHN ITHAI MAITAI.....2ND RESPONDENT

DOUGLAS MBERIA MAITAI.....3RD RESPONDENT

DISTRICT LAND ADJUDICATION OFFICER

TIGANIA EAST/WEST CONSTITUENCY 4TH RESPONDENT

HON. ATTORNEY GENERAL.....5TH RESPONDENT

RULING

1. This application states that it has been brought to court under sections 1A, 1B, 3, 3A and 63(e) of the Civil Procedure Act, Cap 21 & Order 42 Rule 6 of the C.P.R.

2. The application seeks the following orders:-

1. That this application be certified as urgent and be heard ex-parte in the first instance.
2. That status quo be maintained on L.R. Nyambene/Kitheo Nos.2611, 2612, 2579, 2348, 2266, 2176, 479, 1396, 2222,1401, 2576 and 795.
3. That there be a stay of execution of the judgment of Hon. G. Sogomo in Tigania PMCC No. 131 of 2010 delivered on 11th October, 2018 pending the hearing and determination of this appeal.
4. That pending the hearing of this application inter-partes, this honourable court be pleased to issue temporary orders of injunction restraining the Respondents, their agents, servants, employees and whomsoever acting on their behalf or instructions from plucking tea, entering, constructing, cultivating, erecting any structures, trespassing, using, selling or in any manner whatsoever from dealing with L.R. Nyambane/Kitheo Nos.2611, 2612, 2579, 2348, 2266, 2176, 479, 1396, 2222, 1401, 2576 and 795.
5. That pending the hearing of this appeal, this honourable court be pleased to issue temporary orders of injunction restraining the Respondents, their agents, servants, employees and whomsoever acting on their behalf or instructions from plucking tea, entering, constructing, cultivating, erecting any structures, trespassing, using, selling or in any manner whatsoever from dealing with L.R. Nyambene/Kitheo Nos.2611, 2612, 2579, 2348, 2266, 2176, 479, 1396, 2222,1401,2576 and 795.
6. That the orders so granted above be served upon the District Land Registrar – Urru-Tigania West.
7. That costs be provided for.

3. The application is buttressed by the affidavit of Julius Kilemia Maitai, the appellant sworn on **25th May, 2021** and has the following grounds:-

- a. That the Applicant is the owner of L.R. Nyambene/Kitheo Nos. 2611, 2612, 2579, 2348, 2266, 2176, 479, 1396, 2222, 1401, 2576 and 795 which are subject in this appeal.
 - b. That some of the Respondents have started disposing off the suit properties and have threatened to evict the applicant.
 - c. That the applicant has filed an arguable appeal with high chances of success.
 - d. That this appeal will be rendered nugatory if the Respondents are not restrained.
 - e. That the applicant is aged 82 years having been born in the year 1938 and is being given assistance from his son Kilemi Julius.
 - f. That the matter has taken over 43 years and has not been resolved.
4. Upon careful consideration, I only grant a conditional stay of execution. The other prayers will be canvassed interpartes.

The following orders are issued:

- a) A sum of **Kshs.800,000/=** be deposited with court by the applicant as deposit for security **within 14 days** of today failing which the order of stay granted herein shall automatically lapse.
- b) The application to be heard interpartes on **21st July, 2021** by an **ELC Judge at Meru.**
- c) No costs are awarded.

DELIVERED IN OPEN COURT AT CHUKA THIS 28TH DAY OF JUNE, 2021 IN THE PRESENCE OF:

CA: NDEGWA

Applicant and his advocate are not in court

P. M. NJOROGI,

JUDGE.