



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT CHUKA

CHUKA ELC SUIT NO. 1 OF 2019 (OS)

JAMES MUTUGI MWITHI.....PLAINTIFF/1ST RESPONDENT

VERSUS

DEDAN MUGO MWANGI.....DEFENDANT

AND

ZIPPORAH KARIGU MUGAMBI.....1ST APPLICANT

JOHN MWATHI M'MUGAMBI.....2ND APPLICANT

JEREMIAH URAUKO MUGAMBI.....3RD APPLICANT

BEATRICE GACHUNKU.....4TH APPLICANT

DAVID MUTUGI KARIGU.....5TH APPLICANT

ESTHER KAREGI MARIGU.....6TH APPLICANT

JOSPHAT NJERU KIAYA.....7TH APPLICANT

VERSUS

SABERA GAKUNDI MWITHI.....2ND RESPONDENT

BEATRICE KATHAMBI.....3RD RESPONDENT

CHARITY KAINDI.....4TH RESPONDENT

VIRIGINIA MUTHONI.....5th RESPONDENT

JOHN KIMATHI.....6TH RESPONDENT

ALICE KARIMI.....8TH RESPONDENT

GERLAND MUGAMBI.....9TH RESPONDENT

AND

JAMES MWENDAMWITHI.....10TH PROPOSED RESPONDENT

STANLEY MURITHI NYAMU.....11TH PROPOSED RESPONDENT

RULING

1. This application is dated **25th August, 2021** and filed in court on **14th October, 2021**. It seeks the following orders:

- a) That this application be certified urgent and service on the Respondent be dispensed with.
- b) That this Honourable court be pleased to make an order that the police officer commanding Tunyai Police Station do provide security to the applicants when implementing this court's decree of the judgment issued herein on **30th July, 2019**.
- c) That the costs of this application be provided for.

2. The application is supported by the affidavit of **SABERA GAKUNDI MWITHI** and is based on the following grounds:

- a) This Honourable court pronounced judgment on **25th May, 2021**, wherein it reinstated its judgment of **30th July, 2019** to the effect that the applicants do hold the parcel **THARAKA/TUNYAI "A"/390** in common in equal shares.
- b) The applicants wish to sub-divide the land and allocate the resultant sub-divisions to those entitled.
- c) The Respondents have on many occasion threatened to attack the applicants if they attempted to sub-divide the land.
- d) That it has therefore become imperative that the applicants be provided with the security to carry out the exercise.

3. Upon perusal of the said application, I note that the same is dated **25th August, 2021** but only filed in court on **14th October, 2021**. Whereas the application merely seeks an order for the police to provide security in the implementation of the judgment dated **25th May, 2021** and decree of this court issued on **9th August, 2021**, the court has noted that there is an earlier application dated **8th October, 2021** filed by the Plaintiffs seeking inter alia, an order for stay of execution of the said judgment and decree. That earlier application is scheduled for inter-partes hearing on **15th November, 2021**. In view of the orders issued by the court earlier on **18th October, 2021**, the court is of the view that issuing the orders sought in the present application may preempt the earlier application for stay of execution, and may render the same nugatory. The court has further noted that whereas the application is stated to be dated **27th August, 2021**, the same was only filed on **14th October, 2021**. In the circumstances, I issue the following orders:

1. The application dated **27th August, 2021** be heard on **15th November, 2021** alongside the application dated **8th October, 2021**.
2. Orders accordingly.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT CHUKA THIS 25TH DAY OF OCTOBER, 2021 in the presence of:

CA: Ndegwa

C. K. YANO,

JUDGE.