



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT CHUKA**

**CHUKA ELC CASE NO. E004 OF 2021 (OS)**

PETERSON KENNETH MUGO M'MUGA.....1<sup>ST</sup> PLAINTIFF  
ALEXANDER KIRUJA MIRITI.....2<sup>ND</sup> PLAINTIFF  
ROBERT MURITHI CRISPO.....3<sup>RD</sup> PLAINTIFF  
JOHN NJAGI MIRITI.....4<sup>TH</sup> PLAINTIFF  
JUSTUS MBAE MIRITI.....5<sup>TH</sup> PLAINTIFF  
FERDINARD MBABU MIRITI.....6<sup>TH</sup> PLAINTIFF  
LINET KARIMI MIRITI.....7<sup>TH</sup> PLAINTIFF  
SILAS GITONGA MIRITI.....8<sup>TH</sup> PLAINTIFF  
JAMES MUGO MIRITI.....9<sup>TH</sup> PLAINTIFF  
CIRIAKA TIRINDI.....10<sup>TH</sup> PLAINTIFF

**VERSUS**

CELESTINA KARIMI MIRITI (SUED AS THE ADMINISTRATIX OF THE  
ESTATE OF THE LATE MURUNGI KING'ANG'A.....1<sup>ST</sup> DEFENDANT  
DOMISIANO NJERU MUNGIRIA (SUED AS THE ADMINISTRATOR OF THE  
ESTATE OF THE LATE MUNGIRIA M'RUGUCHI).....2<sup>ND</sup> DEFENDANT

**RULING**

1. This matter was scheduled for hearing today, **10<sup>th</sup> November, 2021**. However, Mr. Muriithi, advocate for the Plaintiffs informed the court that he was not ready to proceed for the reason that having gone through the defence filed, he was of the view that an order be made for the County Surveyor, Tharaka Nithi to visit the locus in quo and confirm which parcel of land the Plaintiffs are in occupation of, and thereafter file a report in court. Mr. Muriithi therefore applied for an adjournment and further made an oral application for the court to direct the County Surveyor to visit the suit parcels to establish which parcel the Plaintiffs are in occupation of, and thereafter file a report.

2. On her part, Ms. Kaaria advocate for the 2<sup>nd</sup> defendant informed the court that though they were ready to proceed with the hearing, they were informed that the Plaintiffs would be applying for an adjournment. On the application for a site visit by the surveyor, the 2<sup>nd</sup> Defendant's counsel objected to the same, and urged the court to direct the Plaintiffs to file a formal application to enable them respond, and for the court to make a determination thereafter. The 2<sup>nd</sup> defendant's counsel also applied for leave to file a further affidavit in reply to the supplementary affidavit filed on **9<sup>th</sup> November, 2021** by the Plaintiffs, and served on them on the same date.

3. Mr. Muriithi submitted that filing a formal application will further delay the matter. He however stated that they were ready to file a formal application within **3 days** if directed so by the court. He however, had no objection to leave being granted to the **2<sup>nd</sup> Defendant** to file a further affidavit in response to the supplementary affidavit filed on **9.11.2021**.

4. The court has considered the submissions made. The court has also perused the court record. It is noted that on **25<sup>th</sup> October, 2021**, the court declined to grant the Plaintiffs leave to file a supplementary affidavit. The court noted that on **28<sup>th</sup> September, 2021**, the Plaintiffs were granted leave to file and serve a further affidavit within **7 days**. However, the Plaintiffs did not file the said further affidavit within the time granted or at all, and no good reason was given for their failure to do so. The court then fixed the matter for hearing on **10<sup>th</sup> November, 2021**.

5. The Plaintiffs filed a supplementary affidavit on **9<sup>th</sup> November, 2021**. The issue that I will deal with is whether the supplementary affidavit should be struck out for having been filed without leave of the court.

6. The record shows that this court declined to grant the Plaintiffs leave to file a further or supplementary affidavit on **25<sup>th</sup> October, 2021**. This is because the Plaintiffs had been granted time to file the said document on **28<sup>th</sup> September, 2021**, but they failed to file the same within the **7 days** that were granted or at all. The Plaintiffs have now proceeded to file a supplementary affidavit on **9<sup>th</sup> November, 2021** and the same was filed without leave of the court. Having being declined leave, the Plaintiffs could not disregard the orders of court and proceed to file documents without leave of court and contrary to the orders made by the court. Having filed the supplementary affidavit without the leave of the court, I find that the supplementary affidavit dated **9<sup>th</sup> November, 2021** and filed on the same day is a nullity and the same is hereby struck out for having been filed without the leave of the court.

7. The last issue that I will deal with is whether the County Surveyor should be ordered to visit the locus in quo and establish which parcel of land the Plaintiffs are in occupation of, and thereafter, file a report in court. Considering that the envisaged report may assist the court in arriving at a just decision, and in order not to delay the matter any further through the filing of a formal application, and further considering that no prejudice will be suffered by any party because of the envisaged visit, I will allow the Plaintiffs application to have the County Surveyor, Tharaka Nithi visit the suit properties to establish which parcel the Plaintiffs are in occupation of and thereafter file a report in court.

8. In the premises, and for the reasons I have given above, I make the following orders:

- a) The supplementary Affidavit dated **9<sup>th</sup> November, 2021** and filed on the same date by the Plaintiffs be and is hereby struck out for having been filed without leave of the court.
- b) This matter be and is hereby taken out and the same is adjourned at the instance of the Plaintiffs.
- c) An order is hereby made directed to the County Surveyor, Tharaka Nithi, to visit the suit parcels and determine which parcel the Plaintiffs are in occupation of and thereafter file a report in court within **30 days**.
- d) The Plaintiffs will meet the costs of the surveyor.
- e) The Plaintiffs will also pay today's costs to the **2<sup>nd</sup>** defendant as well as Court Adjournment Fees.
- f) The matter is fixed for mention on **14.12.2021** to confirm filing of the surveyor's report and for further directions.

9. Orders accordingly.

**DATED, DELIVERED AND SIGNED AT CHUKA THIS 10TH DAY OF NOVEMBER, 2021 IN THE PRESENCE OF:**

**C/A: NDEGWA**

**MR. MURIITHI FOR THE PLAINTIFFS**

**MS. KAARIA FOR THE 2ND DEFENDANT.**

**C. K. YANO,**

**JUDGE.**