



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT CHUKA**

**CHUKA ELC CASE NO. 07 OF 2019 (OS)**

**LUKA KIRIMI WILLIAM.....PLAINTIFF**

**VERSUS**

**ROBERT MIRITI MURIANKI.....DEFENDANT**

**RULING**

1. This Ruling is in respect of the Notice of Motion application dated **14<sup>th</sup> September, 2021** brought under Section 1A, 1B & 3A of the Civil Procedure Act, Section 16 of the Land Registration Act and all other enabling provisions of law. The Defendant/Applicant seeks the following orders:

(1) That this Honourable court be pleased to order that a survey be conducted on Land Parcel LOWER EAST MAGUTUNI ADJUDICATION SECTION 656 for the purpose of identifying beacons on the parcel of land.

(2) That this Honourable court be pleased to order the OCS Chogoria Police Station to avail security during the conduct of the survey.

(3) That the costs of this application be provided for.

2. The application is supported by the affidavit of Robert Miriti Murianki, the Applicant and is based on the following grounds:

a) That the execution of the judgment issued by Judge P. M. Njoroge has been delayed due to the fact that the parcel of land lacks beacons.

b) That the judgment debtor has vehemently opposed any survey of the land and they are hostile.

c) That the decree holder is prejudiced as he is unable to occupy his parcel of land, LOWER EAST MAGUTUNI ADJUDICATION SECTION 656.

d) That it is in the interest of justice that the survey is conducted to execute judgment and identify the beacons of the said parcel of land.

3. The applicant has exhibited a copy of the Ruling delivered by Honourable P. M. Njoroge, J, on **17<sup>th</sup> June, 2019** dismissing the suit in its entirety with no orders as to costs.

4. The Plaintiff/Respondent who said that he is serving sentence at Chuka G. K. Prison was escorted to court on **15.12.2021**. He informed the court that he was not opposed to the application herein. However, he wanted the survey exercise to be carried out in his presence.

5. Accordingly, since the application is not opposed, I allow the same in the following terms:

a) An order is hereby made that a survey be conducted by the District Surveyor on Land Parcel LOWER EAST MAGUTUNI ADJUDICATION SECTION 656 for the purpose of identifying beacons on the said parcel of land.

b) An order is hereby made that the Plaintiff/Respondent who is serving sentence at Chuka G. K. Prison be escorted to the suit land and to be present during the survey exercise.

c) The Officer Commanding Chogoria Police Station (OCS) to avail security during the conduct of the survey.

d) The Defendant/Applicant to meet the costs of the surveyor and any other relevant charges.

e) Costs of the application shall be in the cause.

**f) This matter is fixed for **mention on 1.2.2022.****

g) This Ruling to be served on the District Surveyor, Chuka, the OCS Chogoria Police Station and the Officer-in-Charge Chuka G. K. Prison.

6. It is so ordered.

**DATED, SIGNED AND DELIVERED IN OPEN COURT AT CHUKA THIS 15TH DAY OF DECEMBER, 2021** in the presence of:

C/A: Ndegwa

Ms. Kijaru for the Defendant/Applicant

Luka Kirimi William the Plaintiff/Respondent in person

**C. K. YANO,**

**JUDGE.**