



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT CHUKA

CHUKA ELC CASE NO. 215 OF 2017

FORMERLY MERU ELC. 08 OF 2015

FORMERLY EMBU ELC. 266 OF 2015

MUTEGI MUGWETWA.....PLAINTIFF

VERSUS

COUNTY MINISTRY OF LANDS, PHYSICAL PLANNING ENERGY

& ICT COUNTY GOVERNMENT OF THARAKA NITHI.....1ST DEFENDANT

COUNTY GOVERNMENT OF THARAKA NITHI2ND DEFENDANT

THE DIRECTOR GENERAL

(KENYA URBAN RURAL AUTHORITY).....3RD DEFENDANT

KENYA URBAN ROADS AUTHORITY.....4TH DEFENDANT

THE REGIONAL MANAGER-UPPER EASTERN

(KENYA URBAN ROADS AUTHORITY)5TH DEFENDANT

TERRITORIAL WORKS (K) LTD.....6TH DEFENDANT

AND

CHUKA IGAMBANG’OMBE DEVELOPMENT ASSOCIATION...INTERESTED PARTY

RULING

1. This application which is dated **30th December, 2019** takes the following format:-

CHAMBER SUMMONS

(Under Rule 3 (2) of High Court (Practice and Procedure) Rules and the Judicature Act Cap 8 Laws of Kenya and all other enabling Provisions of Law)

LET ALL PARTIES CONCERNED attend the Honourable Judge in Chambers on the day of 2019, at 9.00 a.m in the forenoon or so soon thereafter as Counsel for the Plaintiff/Applicant may be heard on an application for **ORDERS THAT:-**

1. This application be heard ex-parte in the first instance and certified as urgent for hearing during the High Court vacation.
2. The application dated the 30th December 2019 be allowed and admitted for hearing during the current High Court vacation.

3. THAT costs be in the cause.

WHICH APPLICATION is grounded on:-

a) **THAT** the High court is on Vacation and the Applicant has filed a Notice of Appeal against the entire award of the Honourable issued on 4th December,2019.

b) **THAT** the Applicant has a high chance of success with his intended appeal and the same will be rendered nugatory if the 2nd Respondents proceed to execute the Judgement of the Court delivered on 4th December,2019 by cutting off a three(3) storey building which is structurally impractical and if implemented by the 2nd Respondent, the same is irreversible.

c) The award of costs to the interested Party in the judgment delivered on 4th December,2019 who enjoined themselves in their own volition is detrimental to the Applicant which costs may be taxed off any time now.

d) There is imminent risk of the 2nd Defendant demolishing the whole three storey building in the process of removing the alleged encroaching portions for the failure of the judgement delivered on 4th December,2019 to give specific metres the Applicant's building its alleged to have encroached.

e) **THAT** the Applicant is willing to offer sufficient security in the sum of Kshs.300,000 as a condition for a stay order.

THAT it is in the interest of justice and fairness that this Application be allowed as prayed

WHICH APPLICATION IS PREMISED on the annexed affidavit **MURIMI MURANGO** and such further or other grounds to be adduced at the hearing thereof.

DATED at NAIROBI this 30th day of December, 2019.

MURIMI MURANGO ESQ.

ADVOCATES FOR THE PLAINTIFF/APPLICANT

2. On 27th January, 2020 the parties agreed to canvass the application by way of written submissions with the applicant doing so within 7 days of today and the respondents doing so within 7 days after receipt of the applicant's written submissions. This is adopted as an order of this court.

3. Mr. Rono, the Interested Party's advocate is granted 3 days to respond to the application and also 7 days to file his written submissions within 7 days after receipt of the applicant's written submissions.

4. The parties will come to court to take **directions on 17th February, 2020.**

Delivered in open Court at Chuka this 27th day of January, 2020 in the presence of:

CA: Ndegwa

Murimi Murango for the plaintiff

Murango Mwenda for 1st and 2nd defendants

Murango Mwenda h/b Rono for the Interested Party

P. M. NJOROGE,

JUDGE.