



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT CHUKA

CHUKA ELC CASE NO. 265 OF 2017

FORMERLY EMBU ELC. 79 OF 2014

FORMERLY KERUGOYA 294 OF 2013

NJAGI KANAMPIU.....PLAINTIFF

VERSUS

KELLEN NCHUNGUNI RIUNGU.....1ST DEFENDANT

FRANCIS KINEGENI CHABARI.....2ND DEFENDANT

ELOSY KAGENDO STEPHEN.....3RD DEFENDANT

JOSEPH KATHENYA KANAMPIU.....4TH DEFENDANT

RULING

1. This application is dated **31st December, 2019** and seeks orders:

1. That this application be certified urgent and service dispensed with in the first instant.

2. That the honourable court be pleased to order, direct and or authorize Tharaka Nithi County Surveyor and / or District Land Registrar to visit and delineate and / or ascertain and mark the boundaries for LP NO. Mwimbi/KIRARO/1713 and Mwimbi/Kiraro/1714 under the supervision of O.C.S Chogoria respectively pending the hearing and determination of the application for contempt of court pending in court.

3. That this order be served upon the O.C.S. Chogoria Police Station for compliance.

4. The costs of this application be provided for.

2. The application has the following grounds:

1. The respondent is in blatant contempt of court and liable for citing him for contempt of court.

2. The applicants are the sole registered owners and or proprietor of the LP NO. Mwimbi/Kiraro/1713 and Mwimbi/Kiraro/1714 respectively.

3. The application for contempt of court is pending in court and scheduled for hearing today.

4. There is due need to ascertain the boundaries of the two parcels of land in the interest of justice.

3. The application is supported by the affidavit of Francis Kinegeni which states:

I, FRANCIS KINEGENI of P. O. Box 418, Chuka do hereby make oath and state as follows:

1. That I am the 2nd defendant/applicant herein well versed with the facts of this case hence competent to swear this affidavit.

2. That I have the consent authority and / or permission of 1st applicant to swear this affidavit on my behalf and on behalf of the 1st applicant.

3. That am the registered owner and / or proprietor of suit land No. Mwimbi/Kiraro/1714 whereas the 1st defendant is the registered owner of the Mwimbi/Kiraro/1713 all of which are subject matter of this case (annexed here with and marked FK 1a & 1b are copies of title certificates).

4. That this case was finalized on 11th December, 2018 (annexed here with and marked FK2 is a copy of court decree dated 23rd January, 2019).

5. That an order for injunction against the respondent was issued restraining him from interfering with the suit land above mentioned (annexed here with and marked FK3 is a copy of order dated 24th April, 2019).

6. That in total defiance of the court order the respondent has tampered with the boundaries thereby making it next to impossible to identify the bacons and/or to execute the anticipated order for contempt of court.

7. That it is the therefore prudent and justified to order the district land registrar/surveyor for Tharaka Nithi County and/or any other qualified surveyor to visit the site and delineate, fix and ascertain the boundaries of the suit land thereof and furnish the court with the outcome.

8. That all the facts deposed to herein above are true to the best of my knowledge, belief and information.

4. Despite evidence of service, the respondent did not come to court when the application was heard.

5. In the circumstances, prayers 2 and 3 are hereby granted.

6. Costs concerning the implementation of the orders granted today shall firstly be borne by the applicant BUT will eventually be in the cause.

Delivered in open Court at Chuka this 25th day of February, 2020

in the presence of:

CA: Ndegwa

Majau for applicants/defendants

Njagi Kanampiu – plaintiff

P.M. NJOROGE

JUDGE