



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT CHUKA

CHUKA ELC JUDICIAL REVIEW CASE NO. 16 OF 2017

NJIRU MIRANI & 2 OTHERS.....APPLICANTS

VERSUS

THE AG & 4 OTHERS.....RESPONDENTS

AND

ANDREW NYAGA.....1ST INTERESTED PARTY

JAMES KANGORI.....2ND INTERESTED PARTY

KARUGU KARUGERIA.....3RD INTERESTED PARTY

RULING

1. This application is dated **11th December, 2019** and seeks **orders**:

1.That this matter be certified urgent and service be dispensed with in the first instance

2.That the Hon. Court be pleased to CITE one EZEKIEL K. KIANIA, the DISTRICT LAND ADJUDICATION OFFICER, MERU SOUTH for contempt of court for willfully disobeying and or violating the Decree of this Honorable Court made on 18th December 2018.

3.That upon citation of EZEKIEL K.KIANIA the 5th Respondent for contempt of court, this Honorable Court be pleased to commit the 5th Respondent to civil jail for six (6) months and/or to pay a fine as the court may deem fit and just in the circumstances of this suit.

4.That the Hon. Court be pleased to halt and cancel all land adjudication processes going on in KAMAINDI 'A' Land Adjudication Section until the Respondents comply with the decree and judgment of 18th December 2018.

5.That the costs of this Application be provided for.

6.Any other orders that the court may deem just to give.

2. The application has the following **grounds**:

1. On 18th December 2018 this Hon. Court issued a decree quashing and prohibiting the use of the Administrative Order no. ADM/LA/4/118 of 4th October 2012 issued by the 5th Respondent declaring Kamaindi of Kamaindi Location of Tharaka Nithi as a land adjudication area.

2. That the said Decree also directed that the Respondents 'may issue another Declaration which does not breach the Constitutional rights of the Applicants'.

3. That despite having knowledge of the said Judgment and Decree one EZEKIEL K. KIANIA the current Land Adjudication and

Settlement Officer for MERU SOUTH who is the 5th Respondent has gone ahead to announce that he has established an adjudication area known as Kamaindi 'A' in Tharaka Nithi .

4. That the said announcement was made before a fresh declaration could be made as per the directions contained in paragraph 'd' of this Courts Decree of 18th December 2019.

5. That after learning of the public announcement, the Applicants sought information concerning the area to be covered in the adjudication area but the said EZEKIEL K KIANIA declined to give information on size and location of the adjudication area but only stating that 'work would start afresh.'

6. That despite all attempts to obtain information from the said officer on the size, location and boundaries to be covered by the new adjudication exercise fell on deaf ears and the said EZEKIEL K. KIANIA is now busy adjudicating land in the disputed areas of KAMWIMBI and KAMAINDI Locations of Tharaka Nithi without first issuing a first declaration as directed by this Hon. Court.

7. That the action of the said EZEKIEL K. KIANIA is illegal and irregular and amounts to contempt of this Courts decree and Judgment.

8. That his said action is also a contravention of section 5 of the Land Adjudication Act since no fresh declaration has been issued.

9. That the action of the said EZEKIEL K. KIANIA is unconstitutional because he has denied the Applicants access to crucial information which they need to protect their constitutional right to own community land.

10. That the said action is discriminatory against the Applicants because members of the land adjudication committee appointed by the 5th Respondent did not take into consideration the prominent role played by the clan system among the Mbeere Community including the 13 clans of Mbeere living in Tharaka Nithi County.

11. That the 13 Clans of Mbeere Community living in Tharaka Nithi desire to have their community land located in areas of Kamwimbi and Kamaindi Locations of Tharaka Nithi administered through their established clan system since this is their cultural heritage.

12. That towards this end the 13 clans of the Mbeere community living in Kamwimbi and Kamaindi Locations of Tharaka Nithi would like to have their block of community land measuring approximately 4869Ha administered under the Community Land Act instead of the Land Adjudication Act.

13. That there is a strong possibility that the said Community land belonging to the 13 Clans of the Mbeere Community living in Tharaka Nithi is comprised in the area that has been announced as Kamaindi 'A' land Adjudication area.

14. That the 5th Respondent has declined or refused to share information with the Applicants concerning the size, location and boundaries covered by the said KAMAINDI 'A' Land Adjudication area.

15. That due to this denial and the deficiencies of failing to make a fresh declaration the the Applicants are unable to register their claim and interest and their community land is at risk of being alienated and allocated to other communities.

16. That the said 5th Respondents failure to issue a fresh declaration amounts to contempt of this Courts Decree; it is illegal, irregular and unconstitutional and is meant to deny the 13 clans of Mbeere living in Tharaka Nithi County their lawful claim over their community and ancestral lands.

17. That there is need to hold the 5th Respondent EZEKIEL K KIANIA in contempt for undermining the authority of this HON. Court by announcing the adjudication area without issuing a new declaration as is required.

18. That in March 2019 the Applicants on behalf of the 13 Clans of the Mbeere living in Tharaka Nithi County notified the Respondents, the County and National governments that they desired to have their community land in Tharaka Nithi adjudicated upon under the Community Land Act.

19. That the Respondents have never responded to the request by the Applicants and instead they have gone ahead to ignore the courts decree by making the announcement above.

20. That this amounts to a breach of the Constitutional rights of the 13 Clans of the Mbeere living in Tharaka Nithi County and who are a minority and it is against the Decree of this Hon. Court.

21. That the conduct by the Respondents and especially the 5th Respondent EZEKIEL K KIANIA is deliberate; intentional and amounts to contempt of court.

22. That the Respondents' failure to make a fresh declaration as decreed by court amounts to denial and breach of the Applicants constitutional rights to claim and own community land.

23. That unless a fresh declaration is made the 13 Clans of the Mbeere community living in Tharaka Nithi will face discrimination and their community land will be stolen from them.

24. That despite notice to the 5th Respondent, the 5th Respondent has refused and or refused to consider the concerns of the Applicants.

3. The application is supported by the affidavit of Njeru Mairani sworn on **11th December, 2019.**

4. The application was heard interpartes on **10th February, 2019.** After hearing both parties, the court is satisfied that the alleged contemnor, one Ezekiel K. Kiania, the District Land Adjudication Officer, Meru South is not in contempt of court.

5. This application is deemed heard and determined.

Delivered in open Court at Chuka this 10th day of February, 2020 in the presence of:

CA: Ndegwa

M/s Kithaka for the Applicant

Kiongo for AG for the Respondents

P. M. NJOROGI,

JUDGE.