



**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 .....1<sup>ST</sup> DEFENDANT**

**FRANCIS KINEGENI CHABARI.....2<sup>ND</sup> DEFENDANT**

**ELOSY KAGENDO STEPHEN.....3<sup>RD</sup> DEFENDANT**

**JOSEPH KATHENYA KANAMPIU.....4<sup>TH</sup> DEFENDANT**

**RULING**

1. On 25<sup>th</sup> February, 2020 the court delivered the following Ruling:-

**RULING**

1. This application is dated **4<sup>th</sup> December, 2019** and seeks orders:

1. The application be certified urgent and heard expert dispensing with service in the first instant.
2. The honourable court do summon and/or direct the respondent herein to appear before it at appointed time and show cause why he should not be cited for contempt of court's order dated 24<sup>th</sup> April, 2019 and the decree of this court issued on 23<sup>rd</sup> January, 2019.
3. The respondent herein a Mr. Njagi Kanampiu be committed and/or detained in jail at Meru G.K. Prison for a period not exceeding six (6) months for breach (sic) of terms of this court order of injunction and / or for contempt of court.
4. The costs of this application be provided for.

2. The application has the following grounds:

1. The respondent has blatantly ignored and breached the lawful orders of injunction and the terms of the decree in this case.
2. The 1<sup>st</sup> and 2<sup>nd</sup> applicants are registered owners of the LP NO. Mwimbi/Kiraro/1713 and Mwimbi/Kiraro/1714 respectively.
3. The respondent is in real contempt of court and deserves appropriate punishment under the law of the land.
4. The respondent is illegally denying the applicants from enjoying the fruits of the judgment.

3. The application is supported by the affidavit of Kellen Nchuguni Riungu which states:

I, **KELLEN NCHUGUNI RIUNGU** of P. O. Box **418, Chuka** do hereby make oath and state as follows:

1. That I am the 1<sup>st</sup> defendant/applicant herein well versed with the facts of this case hence competent to swear this affidavit.
2. That I am swearing this affidavit in support of contempt of court proceedings on my own behalf and on behalf of the 2<sup>nd</sup> applicant/defendant from whom I have permission, authority and or consent to do so.
3. That consequent upon the final determination of this case on **11<sup>th</sup> December, 2018**. I applied for and was granted an order for permanent injunction against the respondent restraining him from interfering with suit land Nos. Mwimbi/Kiraro/1713 and 1714 respectively (annexed here with and marked KNI is a copy of court order dated **24<sup>th</sup> April, 2019**).
4. That previously I had applied for and was issued with a court decree on **23<sup>rd</sup> January, 2019** which in essence informed the respondent against entering into and / or in whatsoever manner interfering with the suit land Nos. Mwimbi/Kiraro/1713 and 1714 respectively since he has no lien over them, of course his case having been dismissed by this honourable court (annexed here with and marked KNII is a copy of decree dated 23<sup>rd</sup> January, 2019).
5. That on **20<sup>th</sup> April, 2019**, I instructed a court process server through my advocates on record to serve the aforementioned court order for injunction upon the respondent. I am reliably informed that service was properly effected (annexed here with and marked KNIII is a copy of affidavit of service dated **30<sup>th</sup> April, 2019**).
6. That previously before such service referred in part above, on **7<sup>th</sup> March, 2019**, I had engaged the same court process server to effect service of a court decree upon the respondent of which she did successfully (annexed here with and marked KNIV is a copy of affidavit of service dated **20<sup>th</sup> March, 2019**).

4. Despite evidence of service the respondent did not come to court when the application was to be heard interpartes on **29.1.2020**. The applicants' advocate asked the court to allow the application.

5. This application is allowed in terms of prayer 2 and the alleged contemnor NJAGI KANAMPIU is required to come to court on **4<sup>th</sup> March, 2020** to explain why he should not be committed to jail for contempt of court.

6. The orders issued by the court today should be properly served upon the said Njagi Kanampiu within the next 10 days.

7. Costs will be in the cause.

**Delivered in open Court at Chuka this 25<sup>th</sup> day of February, 2020** in the presence of:

CA: Ndegwa

Majau for Applicants/Defendants

Njagi Kanampiu – Plaintiff

**P.M. NJOROGI**

**JUDGE**

2. On **4<sup>th</sup> March, 2020** Advocate Majau, the plaintiff's advocate told the court that the alleged contemnor had purged his contempt by removing the only temporary structure he had constructed on the suit land.

3. On his part Njagi Kanampiu, the alleged contemnor, told the court that he, was willing to fully comply with this court's orders.

4. In the circumstances, I deem the application dated **4<sup>th</sup> December, 2019** to have been positively compromised. It is hereby marked as closed unless the alleged contemnor reneges on his undertaking to fully comply with this court's orders.

5. Costs are awarded to the defendants/applicants.

**Delivered in open Court at Chuka this 4<sup>th</sup> day of March, 2020 in the presence of:**

CA: Ndegwa

Njagi Kanampiu – alleged contemnor

Majau for the defendants

**P. M. NJORGE,**

**JUDGE.**