



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

ELC CASE NO. 16 OF 2019

IN THE MATTER OF DISCOVERED FRAUD OF L.R NO. NTIMA/IGOKI/820 BY OFFICE PROFESSIONAL MISCONDUCT OF ALTERING L.R NO. NTIMA/IGOKI/820 TO NO. 302 IN THE MAP SHEET NO. 108/3/24/1 MERU MUNICIPAL OLD TOWN AND SUBSEQUENTLY SUB-DIVIDING INTO PLOTS NO. MERU MUNICIPAL BLOCK II 882 AND 883

AND

IN THE MATTER OF L.R NO. NTIMA/IGOKI/320 LOCALITY IN R.I.M (REGISTERED INDEX MAP) SHEET NO. 14 OF AND IN THE MATTER OF LAND OFFICER LETTER CONFIRMING L.R NO. NTIMA/IGOKI/820 WAS NOT COMPENSATED BY THE GOVERNMENT OF KENYA VIDE KENYA GAZETTE NOTICE NO. 1264 OF 1977

AND

IN THE MATTER OF MERU MUNICIPAL TOWN CLERK LETTER CONFIRMING L.R NO. NTIMA/IGOKI/820 WAS NOT COMPENSATED BY THE GOVERNMENT OF KENYA VIDE KENYA GAZETTE NOTICE NO. 1264 OF 1977

BETWEEN

FLORENCE MAKANDI.....APPLICANT/PLAINTIFF

LEGAL REPRESENTATIVE OF ANITA NKAIMURA M'MUTUNGI

VERSUS

ATTORNEY-GENERAL.....1ST RESPONDENT/DEFENDANT

DISTRICT SURVEYOR MERU.....2ND RESPONDENT/DEFENDANT

DISTRICT LAND REGISTRAR MERU.....3RD RESPONDENT/DEFENDANT

COUNTY GOVERNMENT OF MERU....4TH RESPONDENT/DEFENDANT

RULING

1. This ruling is in respect of the Preliminary Objection filed on 20.9.2019 by the 1st – 3rd respondent where it is averred that this suit offends the provisions of section 16 of cap 40 laws of Kenya. The 4th respondent is in support of the Preliminary Objection.

2. Section 16 of the Government Proceedings Act provides that;

“In any civil proceedings by or against the Government the court shall, subject to the provisions of this Act, have power to make all such orders as it has power to make in proceedings between subjects, and otherwise give such appropriate relief as the case may require: Provided that— (i) where in any proceedings against the Government any such relief is sought as might in proceedings between subjects be granted by way of injunction or specific performance, the court shall not grant an injunction or make an order for specific performance, but may in lieu thereof make an order declaratory of the rights of the parties.....”

3. The relief sought by the plaintiff in her pleadings are:

(a) “Cancellation of new numbers Meru municipal Block II and 883 and revert to original no. Ntima/Igoki/820.

(b) Cancellation of letters of allotment of plots no's Meru Municipal Block 882 and 883 and revert to the plaintiff.

(c) Costs of the case”.

4. It is clear that the preliminary objection is not in tandem with the prayers sought. It is not lost to this court that no persuasive arguments were advanced by the respondents to warrant the filing of the Preliminary Objection.

5. The said preliminary objection is hereby dismissed with no orders as to costs.

DATED, SIGNED AND DELIVERED AT MERU THIS 28TH DAY OF MAY, 2020

HON. LUCY. N. MBUGUA

ELC JUDGE

ORDER

The date of delivery of this ruling was given to the parties at the conclusion of the hearing and by a fresh notice by the Deputy Registrar. In light of the declaration of measures restricting court operations due to the *COVID-19 pandemic* and following the practice directions issued by his Lordship, the Chief Justice dated 17th March, 2020 and published in the Kenya Gazette of 17th April 2020 as Gazette Notice no.3137, this ruling has been delivered to the parties by electronic mail. They are deemed to have waived compliance with order 21 rule 1 of the *Civil Procedure Rules* which requires that all judgments and rulings be pronounced in open court.

HON. LUCY N. MBUGUA

ELC JUDGE