



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT CHUKA**

**CHUKA ELC CASE NO. 02 OF 2020**

**FRANKLINE JAPHET NJIRU.....PLAINTIFF**

**VERSUS**

**KENYA URBAN ROADS AUTHORITY (KURA).....1<sup>ST</sup> DEFENDANT**

**THE ADMINISTRATOR CHUKA TOWNSHIP.....2<sup>ND</sup> DEFENDANT**

**THE COUNTY GOVERNMENT OF THARAKA NITHI.....3<sup>RD</sup> DEFENDANT**

**HYPER CONSTRUCTIONS & EQUIPMENT COMPANY LIMITED.....4<sup>TH</sup> DEFENDANT**

**RACHAEL NJERI NDOHO.....5<sup>TH</sup> DEFENDANT**

**THE HONOURABLE ATTORNEY GENERAL.....6<sup>TH</sup> DEFENDANT**

**RULING**

1. This application is dated **28<sup>th</sup> May, 2020** and is brought to court under certificate of urgency.

2. It seeks the following orders:-

1. That for reasons set out in the certificate of urgency herewith filed the court be pleased to certify the instant application as urgent and do issue prayer 2 and 4 herein on exparte basis.

2. That pending the hearing interpartes of this application the respondent by themselves they agent or servants or any person acting at their behest be restrained by way of interim injunction from constructing "Moi Girls Road" or any other road within Chuka Township in as much that such construction of "Moi Girls road" or any other road within chuka township affect Plot No.26 B Chuka Township which measures 20 feet by 120 feet.

3. That pending the hearing of the main suit herein the respondent by themselves they agent or servants or any person acting at their behest be restrain by way of interim injunction from constructing "Moi Girls Road" or any other road within chuka township in as much that such construction of Moi Girls Road or any other road within chuka township affect Plot No.26 B Chuka Township which measures 20 feet by 120 feet.

4. That pending Interparties hearing of the instant application , the district surveyor Meru South/Maara Sub Counties be ordered by this honorable court to establish and determine the actual boundaries and perimeters of plot no .26 b vis-à-vis "moi girls road " within CHUKA TOWNSHIP situated in Chuka Town and the survey be conducted as per the existing national map regarding CHUKA TOWN ROADS AND PLOTS and a report be filed in court within 30 days of this order.

5. That these orders be served upon the OCS Chuka Police Station for compliance

6. Cost of this application be provided for.

3. The application has the following grounds:-

- a. The applicant is the owner of Plot No.26 B Chuka Township.
- b. That Plot No.26 B Chuka Township measures 20 feet by 120 feet as per the document held by the director of survey RUAKA IN NAIROBI.
- c. That the applicant has been paying land rates to the 2<sup>nd</sup> and 3<sup>rd</sup> respondent without fail.
- d. That on 18<sup>th</sup> February 2020 D . NDERITU an agent of the 1<sup>st</sup> respondent issued a notice that 20 feet by 20 feet portion part of plot no. 26 b chuka township be demolished.
- e. That the 1<sup>st</sup> respondent contention was and his that 20 feet by 20 feet portion part of Plot No.26 B Chuka Township is on the road reserve.
- f. That the applicant contention is that Plot No.26 B Chuka Township or any part there of is not on the road and or road reserve.
- g. The bond of contention between the applicant and respondent is therefore whether Plot No.26 B or part there of is on the road or road reserve, hence the need to call a surveyor to establish the boundaries and the parameters of plot no.26 b chuka vis-s-vis 'Moi Girls Road'.
- h. The applicant further contends that there is a 11 meter wide space for roads but the respondent have tended to ignore this facts and insisting that plot no.26 b chuka township is on the road reserve.
- i. That on 4<sup>th</sup> April 2020 , the 5<sup>th</sup> and 4<sup>th</sup> respondent at the instance of the 1<sup>st</sup> respondent demolished, damaged and destroyed 20 feet by 20 feet portion part of plot no.26 b chuka township.
- j. That Roma Valuers estimated the loss and damage suffered by the applicant to be ksh,2,893,170.
- k. That there is need to know who has between the applicant and the respondent is on the wrong and this can only be confirmed by the district surveyor.
- l. That the applicant has not been compensated consequently the respondent should be restrained by way of an interim injunction from constructing Moi Girls road or any other road within chuka town ship that may affect Plot No.26 B or part there of in chuka town ship.
- m. That the 1<sup>st</sup> respondent did not follow the law and procedure in acquiring 20 feet by 20 feet portion part of Plot No.26 B Chuka Township and neither did they follow the law and procedure of demolishing 20 feet by 20 feet portion part of Plot No.26 B Chuka Township.
- n. That there is need to have the actual parameters of plot no.26 b chuka township pending the hearing and determination of the main suit herein to facilitate the hearing and determination of the instant application and the main suit.
- o. That the orders of this court should be served upon OCS Chuka police station for compliance.

4. The application is supported by the affidavit of Franklin Japhet Njiru the applicant which states as follows:

I, **FRANKLIN JAPHET NJIRU** OF P.O BOX 231 CHUKA in the republic of Kenya make oath and states as follows.

1. That I am the applicant herein well versed with the particulars of this suit and hence competent to make this oath.
2. That I am the owner of plot no.26 B Chuka Township(**annexed and marked F.J.N 1 is the receipts for payment of land rates**)
3. That Plot No.26 B Chuka Township measures 20 feet by 120 feet as per the document held by the director of survey RUAKA IN NAIROBI.(**annexed and marked F.J.N 2 is the PDP**).
4. That I have been paying land rates to the 2<sup>nd</sup> and 3<sup>rd</sup> respondent without fail.
5. That on 18<sup>th</sup> February 2020 D NDERITU an argent of the 1<sup>st</sup> respondent issued a notice that 20 feet by 20 feet portion part of plot no. 26 b chuka township be demolished.(**annexed and marked F.J.N 3 is the notice to demolish plot no.26 b chuka township**)
6. That the 1<sup>st</sup> respondent contention was and his that 20 feet by 20 feet portion part of Plot No.26 B Chuka Township is on the road reserve.
7. That my contention is that plot no.26 b chuka township or any part there of is not on the road and or road reserve.
8. The bond of contention between me and respondent is therefore whether plot no.26 b or part there of is on the road or road

reserve, hence the need to call a surveyor to establish the boundaries and the parameters of plot no.26 b chuka vis-a-vis "Moi Girls Road".

9. The I further contend that there is a 11 meter wide space for roads but the respondent have tended to ignore this facts and insisting that plot no.26 b chuka township is on the road reserve .

10. That on 4<sup>th</sup> April 2020 , the 5<sup>th</sup> and 4<sup>th</sup> respondent at the instance of the 1<sup>st</sup> respondent demolished, damaged and destroyed 20 feet by 20 feet portion part of plot no.26 b chuka township.

11. That Roma Valuers estimated the loss and damage suffered by the me to be ksh,2,893,170.(**annexed and marked F.J.N 4 is the valuer report**)

12. That there is need to know who has between me and the respondent is on the wrong and this can only be confirmed by the district surveyor.

13. That I have not been compensated consequently the respondent should be restrained by way of an interim injunction from constructing Moi Girls road or any other road within chuka town ship that may affect Plot No.26 B or part there of in chuka town ship pending the hearing and determination of the application and the main suit.

14. That the 1<sup>st</sup> respondent did not follow the law and procedure in acquiring 20 feet by 20 feet portion part of Plot No.26 B Chuka Township and neither did they follow the law and procedure of demolishing 20 feet by 20 feet portion part of Plot No.26 B Chuka Township.

15. That there is need to have the actual parameters established of plot no.26 b chuka township pending the hearing and determination of the instant application and the main suit herein to facilitate the hearing and determination of the instant application and the main suit.

16. That the orders of this court should be served upon OCS Chuka police station for compliance.

17. That all which is deponed herein is true to the best of my knowledge belief and information.

5. At this interlocutory stage, the following orders are issued:-

- a. Matter **certified urgent.**
- b. Prayers 2 and 5 granted
- c. Interpartes hearing on **2<sup>nd</sup> June, 2020**

**Delivered in open Court at Chuka this 22<sup>nd</sup> day of May, 2020 in the presence of:-**

CA: Ndegwa

Hon. N. Kahara – Deputy Registrar

**P. M. NJOROGE,**

**JUDGE**