



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT CHUKA

CHUKA ELC CASE NO04.....OF2020

ELIAS MICHENI MUGO.....PLAINTIFF

VERSUS

KENYA URBAN ROADS AUTHORITY (KURA).....1ST DEFENDANT

THE ADMINISTRATOR CHUKA TOWNSHIP.....2nd DEFENDANT

THE COUNTY GOVERNMENT OF THARAKA NITHI.....3RD DEFENDANT

HYPER CONSTRUCTIONS AND EQUIPMENTS COMPANY LIMITED...4TH DEFENDANT

RACHAEL NJERI NDOHO.....5TH DEFENDANT

THE HONORABLE ATTORNEY GENERAL.....6TH DEFENDANT

RULING

1. This application is dated **20th May, 2020**. It states that it has been brought to court under Section 3 and 3A Civil Procedure Act, Orders 40 Rule 1 and 51 Civil Procedure Rules and under Articles 40 and 64 of the Constitution of Kenya.

2. The application 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 ex parte basis.

2.That pending the hearing inter partes of this application the respondent by themselves their 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 A 2 chuka township which measures 60 feet by 20 feet.

3.That pending the hearing of the main suit herein the respondent by themselves their 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 as such construction of "moi girls road" or any other road within chuka township affect plot no.26 A2 2 chuka township which measures 20 feet by 60 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 "MOI GIRLS" road vis-à-vis PLOT NO 26 A 2 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 A 2 Chuka Township.

- (b) That Plot No.26 A 2 (which is half of plot no.26 A Chuka Township) measures 20 feet by 60 feet as per the document held by the director of survey RUARAKA IN NAIROBI.
- (c) That the applicant has been paying land rates to the 2nd and 3rd respondent without fail.
- (d) That on 18th February 2020 D. NDERITU an agent of the 1st respondent issued a notice that 20 feet by 20 feet portion part of plot no. 26 A 2 chuka township be demolished.
- (e) That the 1st respondent contention was and his that 20 feet by 20 feet portion part of plot no.26 A2 chuka township is on the road reserve.
- (f) That the applicant contention is that plot no.26 A2 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 A 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 A 2 chuka vis-a-vis 'moi girls road'.
- (h) The applicant further contends that there is a 11 meter wide space for roads construction but the respondent have tended to ignore this facts and insisting that plot no.26 A 2chuka township is on the road reserve .
- (i) That on 4th April 2020 , the 5th and 4th respondent at the instance of the 1st respondent demolished, damaged and destroyed 20 feet by 20 feet portion part of plot no.26 A 2 chuka township.
- (j) That Roma Valuers Estimated the loss and damage suffered by the applicant to be ksh, 7,993,253.60
- (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 a 2 chuka township or part there of .
- (m) That the 1st respondent did not follow the law and procedure in 'acquiring' 20 feet by 20 feet portion part of Plot No.26 a 2 Chuka Township and neither did they follow the law and procedure of demolishing 20 feet by 20 feet portion part of Plot No.26 A 2 Chuka Township.
- (n) That there is need to have the actual parameters of plot no.26 A 2 chuka township established 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 Elias Micheni Mugo, the applicant, sworn on **20th May, 2020** which states:

I, ELIAS MICHENI MUGO OF P.O BOX 458 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 A2 Chuka Township(**Annexed and marked E.M.M 1 is an agreement of sale and minutes of council authorizing transfer from RICHARD GAKUURI to the plaintiff**)
3. That Plot No.26 A 2 Chuka Township (which is half of plot no.26 a chuka township) measures 20 feet by 60 feet as per the document held by the director of survey RUARAKA IN NAIROBI.(**Annexed and marked E.M.M 2 is the PDP f/r no.30/171 folio no.253 held by director of survey**).
4. That I have been paying land rates to the 2nd and 3rd respondent without fail.(**Annexed and marked E.M.M 3 is receipt from 2nd defendant of payment of land rates**)
5. That on 18th February 2020 D. NDERITU an agent of the 1st respondent issued a notice that 20 feet by 20 feet portion part of plot no. 26 A 2 chuka township be demolished.(**Annexed and marked E.M.M 4 is the notice to demolish plot no.26 b chuka township FROM d nderitu**)
6. That the 1st respondent contention was and his that 20 feet by 20 feet portion part of Plot No.26 A 2 Chuka Township is on the road reserve.
7. That my contention is that plot no.26 A 2 chuka township or any part there of is not on the road and or road reserve.

8. That the bond of contention between me and the respondent is therefore that whether plot no.26 a 2 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 A2 chuka vis-a-vis 'Moi Girls Road'.

9. That I further contend that there is a 11 meter wide space for roads constructions but the respondent have tended to ignore this facts and insisted that plot no.26 A 2 chuka township is on the road reserve .

10. That on 4th April 2020 , the 5th and 4th respondent at the instance of the 1st respondent demolished, damaged and destroyed 20 feet by 20 feet portion part of plot no.26 A 2 chuka township.

11. That Roma Valuers estimated the loss and damage I had suffered at the hands of the 5th and the 4th defendant at the instance of the 1st defendant to be ksh.,7,993,253.60.(**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 A 2 or part thereof in chuka town ship pending the hearing and determination of this application and the main suit.

14. That the 1st respondent did not follow the law and procedure in 'acquiring' 20 feet by 20 feet portion part of Plot No.26 A 2 Chuka Township and neither did they follow the law and procedure of demolishing 20 feet by 20 feet portion part of Plot No.26 A 2 Chuka Township.

15. That there is need to have the actual parameters established of plot no.26 A 2 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. When the application came up for interpartes hearing on **2nd June, 2020**, Mr. I.C. Mugo the applicant's advocate told the court that he had properly served all the defendants but only the 2nd and 3rd defendants were represented in court. He told the court that he was ready to prosecute the application. Advocate Saluny, representing the 2nd and 3rd defendants told the court that he had just been appointed. He asked the court to grant him 14 days to respond to the application. He told the court that he was not opposed to the court granting prayers No. 2 and 4 pending hearing and determination of the application.

6. On **22nd May, 2020**, this court had issued the following orders:

1.Matter certified urgent.

2.Prayers 2 and 5 granted.

3.Interpartes hearing on **2nd June, 2020**

7. Having heard advocates for the parties present in court, the following orders are issued:

(i) The application is to be canvassed by way of written submissions.

(ii) Defendants/Respondents granted 14 days to respond to the application.

(iii) After receipt of the defendants' responses, the plaintiff/applicant is to file and exchange written submissions in support of the application within 14 days and the defendants are to file and exchange their written submissions within 14 days after receipt of the plaintiff's written submissions.

(iv) Parties to come to court for directions to fix a date for delivery of the apposite ruling on 29th September, 2020

(v) Applicant to serve orders issued by the court today upon the 1st, 4th, 5th and 6th defendants within 10 days of today.

(vi) Ruling containing apposite orders has been written and delivered in court.

(vii) Parties are directed to file all pleadings in both hard and soft copies AND soft copies are to be filed in Word Format Font 12.

(viii) Prayers 2 and 5 granted and extended.

Written and delivered in open Court at Chuka this **2nd day of June, 2020** in the presence of:

CA: Ndegwa

I.C. Mugo for the Plaintiff/Applicant

Saluny for the 2nd and 3rd Defendants/Respondents

P. M. NJOROGI,

JUDGE.