



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT CHUKA**

**CHUKA ELC CASE NO. 03 OF 2020**

**PIUS WATENE D MAINA (suing for and on**

**behalf of the Baptist Convention of Kenya.....PLAINTIFF/APPLICANT**

**VERSUS**

**THE DIRECTOR GENERAL KENYA URBAN ROADS**

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

**HYPERTECK CONTRACTORS & EQUIPMENT**

**LIMITED.....2<sup>ND</sup> DEFENDANT/RESPONDENT**

**KENYA POWER & LIGHTING COMPANY.....3<sup>RD</sup> DEFENDANT/RESPONDENT**

**THE INSPECTOR GENERAL OF POLICE.....4<sup>TH</sup> DEFENDANT/RESPONDENT**

**THE OCS CHUKA POLICE STATION.....5<sup>TH</sup> DEFENDANT/RESPONDENT**

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

**RULING**

1. This application is dated **21<sup>st</sup> May, 2020**. It states that it has been brought to court under Articles 40 and 64 of the Constitution, Sections 3, 3A, of the Civil Procedure Act, Sections 24, 25, 26 and 28 of the Land Registration Act, 2012 and Order 40 Rule 1 and Order 51 Rule 1 of the Civil Procedure Rules.

2. The application seeks the following orders:-

**1.THAT** this **APPLICATION** and the annexed **PLAINT** be certified urgent and be heard ex parte at the first instance and speedily thereafter.

**2.THAT** pending inter parties hearing and subsequent determination of this **APPLICATION** and the **PLAINT**, a temporary injunction be issued restraining the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> defendant ,their agents , servants or anybody acting on their behest from entering or occupying the plaintiff’s land parcel no LR KARINGANI/NDAGANI/594.

**3.THAT** pending inter parties hearing and subsequent determination of this **APPLICATION** and **PLAINT**, the survey report prepared by the Ministry of Lands and Physical Planning pursuant to the court order in Chuka Chief Magistrates ELC No.9 of 2020 on 28/04/2020 to determine the boundary of LR KARINGANI/NDAGANI/594 and the Moi girls circuit road, be adopted as a report of this court and the beacons erected by the survey of kenya during the said exercise be adopted as the exact boundary of the road.

**4.THAT** the OCS Chuka police station be ordered to provide security in enforcement of the orders herein.

**5.THAT** in view of the extreme urgency of the matter; and social distancing directives, the Plaintiff be permitted to effect service electronically through email addresses provided herein.

**6.That** the costs of this application be provided for.

3. The application has the following grounds:-

- (a) That the Plaintiff is a registered trustee of the Baptist Convention of Kenya, a church registered under the Societies Act.
- (b) That the Baptist Convention of Kenya is the sole registered proprietor of land parcel no LR; KARINGANI/NDAGANI/594 which property is freehold and absolute.
- (c) That the plaintiff has constructed the following developments on the land;
- Baptist Convention in Kenya- Chuka Church
  - A private primary school
  - Commercial building with rental shops
- (d) That on or around 7<sup>th</sup> February 2020 agents of the 1<sup>st</sup> defendant/respondent marked buildings in Chuka township that were ostensibly on a road reserve, for demolition to pave way for tarmacking of the “Moi Girls” road .
- (e) That the commercial building belonging to the plaintiff/applicant and standing on land parcel no LR; KARINGANI/NDAGANI/594 WAS MARKED WITH A RED ‘X’ SIGN.
- (f) That the plaintiff traveled to the regional offices of the 1<sup>st</sup> defendant in Meru town to inquire why part of its commercial building was painted with an X sign but was not given any audience.
- (g) That the plaintiff/applicant moved to court in Chuka Chief Magistrate ELC No.9 of 2020 and after hearing of the application in open court, an order of injunction was issued against the 1<sup>st</sup> respondent/defendant, its agents or anyone else acting on their behest from demolishing or in any other way interfering with the Applicant’s commercial building to wit shops standing on land parcel no LR KARINGANI/NDAGANI/594 pending the hearing and determination of the suit.
- (h) That the said orders were personally served upon the 1<sup>st</sup> defendant’s resident engineer-upper eastern region, engineer D. Nderitu at the offices of the 1<sup>st</sup> defendant in Meru town on 12<sup>th</sup> march 2020 and also on the office of the Attorney General at Meru.
- (i) That the 1<sup>st</sup> defendant officers kept making threats of demolition to tenants at the Applicants premises despite having been served with the court order and this prompted the Applicant to officially write and inform the OCS Chuka police station of the threats to disobey the said court order.
- (j) That on the morning of 4<sup>th</sup> April 2020 at 6am, officers of the 1<sup>st</sup> defendant in total disrespect for the authority of courts demolished the Applicant’s commercial building standing on LR KARINGANI/NDAGANI/594 in Chuka town.
- (k) The court in Chuka CM ELC No.9 of 2020 had further ordered the survey of Kenya to conduct an independent survey exercise to ascertain the actual boundary between the ‘moi girls’ road and LR KARINGANI/NDAGANI/594.
- (l) That the survey exercise by the survey of Kenya under the Ministry of Lands and Physical planning established that all the demolished buildings stood on LR KARINGANI/NDAGANI/594 and none was on the road or the road reserve.
- (m) That if the orders sought are not granted the plaintiff/applicant will stand to suffer irreparable loss which cannot be compensated by way of damages.
- (n) No party stands to be prejudiced in the event the orders sought are granted.

4. The application is supported by the affidavit of Pius Watene D. Maina, the applicant, who is suing for and on behalf of the Baptist Convention of Kenya, which states as follows:

I PIUS WATENE D MAINA OF P O BOX 76 KANGARI in the republic of Kenya being an adult male of sound mind make oath and state as follows;

1. That I am a registered trustee of the Baptist Convention of Kenya, a church registered under the Societies Act.(**attached herein and marked PM1 is a copy of the certificate of incorporation showing my registration as a trustee**)
2. That the Baptist Convention of Kenya is the registered proprietor of LR; KARINGANI/NDAGANI/594 (**annexed herein and marked PM2 is a copy of the official search and title deed of LR; KARINGANI/NDAGANI/594**)
3. That Baptist Convention of Kenya has constructed a church (CHUKA BAPTIST CHURCH), a primary school and commercial buildings on LR KARINGANI/NDAGANI/594.
4. That sometimes in 2016, the Plaintiff/Applicant sought and got approval from the county government of Tharaka Nithi to construct a commercial building (to wit shops)on LR KARINGANI/NDAGANI/594.(**Attached herein and marked PM3 is a bundle of the approved construction documents**)

5. That the purpose of construction of the said commercial building was to act as a means of raising reliable income for use in the smooth running of church programs and activities at the Chuka Baptist Church.
6. That on or around 7<sup>th</sup> February 2020 agents of the 1<sup>st</sup> defendant/respondent marked buildings in Chuka township for demolition to ostensibly pave way for tarmacking of the “Moi Girls” road .
7. That the commercial building belonging to the plaintiff/applicant and standing on land parcel no LR; KARINGANI/NDAGANI/594 WAS MARKED WITH A RED ‘X’ SIGN and efforts by the plaintiff to seek reasons or audience with the defendant were futile.
8. That the plaintiff/applicant moved to in Chuka Chief Magistrate ELC No.9 of 2020 and obtained an an order of injunction against the 1<sup>st</sup> respondent/defendant, its agents or anyone else acting on their behest from demolishing or in any other way interfering with the Applicant’s commercial building to wit shops standing on land parcel no LR KARINGANI/NDAGANI/594 pending the hearing and determination of the suit. **(attached herein and marked PM4 is a copy of the court order)**
9. That the said orders were served on the 1<sup>st</sup> defendant and also on the office of the Attorney General at Meru. **(attached herein and marked PM5 is a copy of the affidavit of service)**
10. That on the morning of 4<sup>th</sup> April 2020 at 6am, in the company of a contingent of gun-wielding police officers , and in total contempt of court, the 1<sup>st</sup> defendant demolished the Applicant’s commercial building standing on LR KARINGANI/NDAGANI/594 in Chuka town.
11. That a survey exercise carried out by the survey of Kenya after the said demolition found that all the demolished buildings stood on LR KARINGANI/NDAGANI/594 and none was on a road reserve. **(attached herein and marked PM6 is a copy of the survey report)**
12. That after the survey exercise, the survey of kenya put up beacons on the established boundary of LR KARINGANI/NDAGANI/594 and the Moi Girls road. However, agents of the 1<sup>st</sup> defendant have vandalized those beacons.
13. That a valuation of the property and loss incurred after the demolition found the total value at Ksh 23,188,000. **( attached herein and marked PM7 is a copy of the valuation report).**
14. That it is in the best interest of justice that this honourable court arrests this dire situation where officers of the 1<sup>st</sup> defendant have forcibly demolished the plaintiff’s property, entered into and are alienating the plaintiffs land without adhering to due legal process on compulsory acquisition of land.
15. That if the orders sought are not granted the plaintiff/applicant will stand to suffer irreparable loss, reputation and ridicule which cannot be compensated by way of damages as the plaintiff is a church which is held in high esteem by its faithful and the society at large.
16. No party stands to be prejudiced in the event the orders sought are granted.
17. That all which is deponed to herein is true to the best of my knowledge, belief and information whose sources have been disclosed.

5. When the matter was slated to be heard interpartes on 2<sup>nd</sup> June, 2020, the defendants, although properly served, did not come to court. As a result, the application was heard in their absence.

6. Mr. Muthomi Gitari, the applicant’s advocate told the court that he wished to rely on the grounds on the face of the application and on the applicant’s supporting affidavit sworn on 21<sup>st</sup> May, 2020. He told the court that the applicant would suffer irreparable damage if the orders he sought were not granted. He was unequivocal that the defendants were hell bent to interfere with the applicant’s Land Parcel No. KARINGANI/NDAGANI/594 in Chuka Town without following due process as prescribed by the applicable law. Mr. Muthomi Gitari, the applicant’s advocate told the court that he would be comfortable with the grant of prayer 2 in the application and, therefore, prayer 3, which as it is framed sought a final order could await final determination of the suit.

7. Having considered all the facts placed before the court, I issue the following orders:

- a) This application is deemed heard and determined.
- b) Prayers 2 and 4 are granted.
- c) The plaintiff to serve the orders issued by the court today which are contained in this ruling upon the defendants within 10 days of today.
- d) The plaintiff is to fully comply with order 11, CPR within 21 days of today and the defendants are to do so within 21 days after receipt of the plaintiff’s compliance documents.

e) Parties are directed to come to court on 29.9.2020 to take a mutually convenient hearing date.

f) This ruling does not affect the validity of any orders granted in Chuka CMCC ELC No. 9 of 2020.

**Written and delivered in open Court at Chuak this 2<sup>nd</sup> day of June, 2020 in the presence of:**

**CA; Ndegwa**

**Muthomi Gitari for the Plaintiff**

**P. M. NJORGE,**

**JUDGE.**