



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT CHUKA

CHUKA ELC CASE NO. 18 OF 2019

FORMERLY MARIMANTI ELC 48 OF 2017

FORMERLY CHUKA ELC 191 OF 2017

DALCO TRADING CENTREAPPLICANT/PLAINTIFF

VERSUS

KAMAITA IMATHIU.....1ST RESPONDENT/DEFENDANT

LAWRENCE N. MUGAMBI.....2ND RESPONDENT/DEFENDANT

MOHAMED HASHIN JAMAH.....3RD RESPONDENT/DEFENDANT

LAND REGISTRAR,

THARAKA NITHI COUNTY.....4TH RESPONDENT/DEFENDANT

RULING

1. This application is dated 12th August, 2020 and has been brought to court under sections 1A, 1B, 3A and 63 of the Civil Procedure Act and under Order 51 of the Civil Procedure Rules. The application seeks the following orders:-

1. THAT this application be certified as urgent and that in the first instance service of the same upon the defendants/respondents be dispensed with and that it be heard ex-parte.

2. That this honourable court be pleased to issue an order staying and / or suspending the implementation and or execution by the 1st & 2nd defendant s/respondents; the officer commanding Tunyai police station or the officers working under him or any other officer possessed with legal power to implement and/or execute the order given on the 4th day of April 2019 in PMCC No. 48 of 2017 Marimanti now Chuka High Court ELC no 18 of 2019 pending the hearing inter parties of this application and determination of the same.

3. That the orders made and or given on the 4th day April 2019 in PMCC No. 48 of Marimanti (now Chuka High Court ELC No. 18 of 2019) be reviewed and set aside in their entirety.

4. That the costs of this application be specifically be provided for.

2. The application is supported by the affidavit of Patrick Karani, for the plaintiff, and has the following grounds:

1. That on the 11th October 2018 in the presence of all the legal counsels involved in this cause – then PMC No. 48 of 2017 Marimanti and by reason of jurisdiction issues the proceedings therein were put on hold.

2. That on 11th October 2018 the appropriate parties were advised to move the relevant High Court appropriately.

3. That the plaintiff/applicant vide High Court ELC Misc. Application No. 9 of 2018 moved the High Court ELC to transfer PMCC No. 48 of 2017 – Marimanti to ELC Chuka for hearing and final disposal by reason of pecuniary jurisdiction.

4. That all the parties in PMCC No. 48 of 2017 Marimanti were dully served and participated in the Misc. Application No. 9 of 2018 ELC Chuka

5. That the application by the 1st & 2nd defendants of 11.12.2018 in PMCC No. 48 of 2017 Marimanti was and still remains an abuse of the court process and that the application was and still remains an application unknown in law.

6. That the plaintiff /applicant was unaware of the application resulting in the orders complained of –and that for over one year the 1st and 2nd defendants hid the existence of the said orders

7. That the conduct of the 1st and 2nd defendants is without doubt, calculated to defeat the court due process, as it were, by stealing a march.

8. That this case is part heard and were it not for the covid-19 pandemic, would be over by now.

9. That the 1st & 2nd defendants have embarked on a violent and illegal process of evicting the plaintiff from the suit land.

3. Mr. Siagi told the court that he was relying on the grounds on the face of the Notice of Motion and on its supporting affidavit. He told the court that this suit had been transferred to this court from Marimanti Principal Magistrate's Court and for that reason the defendants cannot rely on orders issued by the lower court.

4. I have considered the issues raised in this application. It is ordered as follows:

a) This matter is certified urgent.

b) Prayer 2 in the application is granted.

c) The O.C.S. Tunyai Police Station is ordered to desist from purporting to assist in the implementation of the order granted on 4th April, 2019 in Marimanti PMCC No. 45 of 2019 which is NOW Chuka ELC No. 18 of 2019.

d) The application will be heard interpartes on 21st October, 2020.

e) Costs shall be in the cause.

Delivered in open Court at Chuka this 12th day of August, 2020 in the presence of:

CA: Ndegwa

Siagi for the applicant

P. M. NJORGE,

JUDGE.