



**REPUBLIC OF KENYA**

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

**EMBU ELC CASE NO. 239 OF 2015**

**PAUL NJERU MWATHE.....PLAINTIFF/APPLICANT**

**VERSUS**

**VIDYA THIRA MWATHE.....1<sup>ST</sup> DEFENDANT/RESPONDENT**

**CATHERINE MUTHONI.....2<sup>ND</sup> DEFENDANT/RESPONDENT**

**MARY WARUE JOHN.....3<sup>RD</sup> DEFENDANT/RESPONDENT**

**ALOIS NYAGA MBOGO.....4<sup>TH</sup> DEFENDANT/RESPONDENT**

**RULING**

1. This application states on its face that it has been brought to court under sections 1A, 1B, and 3A of the Civil Procedure Act, and all other enabling provisions of the law.

2. The application seeks the **following orders**:-

1. That the application dated 30<sup>th</sup> July, 2020 be heard during the current vacation period.
2. That this application be certified urgent and be heard on priority basis.
3. That there be an order restraining the respondents, their agents and/or servants from evicting the applicant from the portion he occupies on Land Parcel Numbers KYENI/MUFU/7142 to 7148.
4. That the District Surveyor Embu be ordered to determine the exact position of the portion occupied by the applicant on Land Parcel Numbers KYENI/MUFU/7142 to 7148.
5. That the defendants/respondents be ordered to transfer 2.6 acres from Land Parcel Numbers KYENI/MUFU/7142 to 7148 from the portion where the applicant occupies and/or has developed.
6. Costs be awarded to the applicant.

3. The application is supported by the affidavit of **Paul Njeru Mwathe**, the applicant and has the following grounds:-

- a) That this honourable court issued a decree to the effect that the defendant holds Land Parcel No. KYENI/MUFU/7142 to 7148 in trust for the plaintiff.
- b) That from the said date the portion has not been excised as per the said decree.
- c) That the Respondents have instead tried to evict the applicant from portion where he lives having sold the same to third parties.
- d) That on 29<sup>th</sup> June, 2020 the applicant visited the Lands Registry and realized that the decree had not been implemented.
- e) That the applicant tried to implement the decree but he was unsuccessful because he did not have the original copy of the said decree.

f) That the Respondents have previously purported to move the applicant to one of the portions herein which is far from where he has been living for ages having extensively developed his portion.

g) That it is only fair that the orders sought herein be granted so that the applicant is not evicted from his land.

4. Upon perusal and consideration of the application and its annexures, I issue the following orders:-

1. The application is certified urgent.

2. Prayer 2 is granted in terms of section 63 of the Civil Procedure Act in view of the fact that the court will be on recess upto **15<sup>th</sup> September, 2020** AND THIS **prayer is granted pending hearing and determination of this application.**

3. The application will be heard interpartes at Embu on **22<sup>nd</sup> September, 2020.**

**Delivered in chambers at Chuka this 6<sup>th</sup> day of August, 2020 in the presence of:**

**CA: Ndegwa**

**P. M. NJOROGI,**

**JUDGE**