



**REPUBLIC OF KENYA**

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

**ELC CASE NO. 37 OF 2019**

**IN THE MATTER OF LAND ADJUDICATION ACT (CAP 284)**

**IN THE MATTER OF DISCOVERED FRAUD OF PARCEL OF LAND NO. 211 GIITHU ADJUDICATION SECTION**

**AND**

**IN THE MATTER OF ANCESTRAL INHERITANCE FAMILY LAND FORCEFUL EVICTION BY BURNING HOMESTEAD HOUSES BY MISUSE OF POWER OF OFFICE BY ABETTING CORRUPTION**

**AND**

**IN THE MATTER OF SECTION 7 AND SECTION 4 (4) OF THE LIMITATION OF ACTION ACT (CAP 22)**

**MARGARET MUKONATHU.....APPLICANT**

**VERSUS**

**ATTORNEY GENERAL.....1<sup>ST</sup> RESPONDENT/DEFENDANT**

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

**(DEMARCATIION LAND SURVEYOR OFFICER)**

**LAND ADJUDICATION OFFICER.....3<sup>RD</sup> RESPONDENT/DEFENDANT**

**CHIEF GIITHU LOCATION.....4<sup>TH</sup> RESPONDENT/DEFENDANT**

**NAHASON KARUTI.....5<sup>TH</sup> RESPONDENT/DEFENDANT**

**RULING**

1. This ruling is in respect of the application dated 24.7.2020 where the plaintiff is seeking orders to restrain the 5<sup>th</sup> respondent from the forceful and violent trespass on her land parcel No. 2411 at Giithu adjudication section pending the hearing and determination of the case. She also desires that the OCS Mikinduri police station be ordered to implement this order. She contends that the applicant is felling trees and selling them. She doesn't stay on the suit land. She stays at Makutano.

2. The 5<sup>th</sup> respondent opposed the application via a replying affidavit filed on 18.8.2020 where he contends that the land dispute went to Njuri Ncheke council of elders who ruled in his favour. He also states that during the demarcation period in year 2015, the plaintiff lodged a case against him at the lands office where the case was heard and he won. He avers that he is the one in actual occupation of the suit land.

3. On 19.8.2020, this court gave directions for the executive officer of this court to visit the scene and file a report capturing the following:

**(i) "What are the developments on the suit land (buildings, crops, trees, fencing etc).**

**(ii) Who is in utilization of the suit land (occupation and user)".**

4. I find that none of the two parties have availed documents to ascertain the legal ownership of the land. The suit land appears to be in the

ambit of the adjudication process of which the plaintiff applicant has alluded to having done the case before the committee where she won. She has no such proceedings.

5. The 5<sup>th</sup> respondent also contends that the case was done at land's office where he won and he has made reference to annexure NK 3. However, I can see no such documents in the file. The documents availed as annexures to the replying affidavit are not even marked at all.

6. The case is however at the infancy stage and the court cannot deal with the issue of ownership at the interlocutory stage. Thus the issue of concern at this stage is the nature and extent of utilization of the land and how that land can be preserved.

7. The scene visit report indicates that the 5<sup>th</sup> defendant is the one who is utilizing the land. He is cutting mature trees, he has dug holes ready to plant, he is constructing a house and he is harvesting the miraa.

8. In paragraph 7 of the originating summons, the plaintiff is seeking to have the 5<sup>th</sup> defendant evicted from the suit land and he be compelled to reconstruct a house. It follows that if the court was to allow the application restraining the 5<sup>th</sup> respondent from trespassing on the land, the court will in essence be allowing the substantive orders sought in the main suit yet the main hearing has not been conducted.

9. In the circumstances, I decline to allow the application but I find it necessary to give the following orders:

**(1) The 5<sup>th</sup> respondent shall not cut any more trees on the suit land.**

**(2) The costs of this application shall abide the outcome of the suit.**

**DATED, SIGNED AND DELIVERED AT MERU THIS 21<sup>ST</sup> DAY OF OCTOBER, 2020**

**HON. LUCY. N. MBUGUA**

**ELC JUDGE**

**ORDER**

The date of delivery of this Ruling was given to the advocates for the parties through a virtual session via Microsoft teams on 5.10.2020. In light of the declaration of measures restricting court operations due to the *COVID-19 pandemic* and following the practice directions issued by his Lordship, the Chief Justice dated 17<sup>th</sup> March, 2020 and published in the Kenya Gazette of 17<sup>th</sup> April 2020 as Gazette Notice no.3137, this Ruling has been delivered to the parties by electronic mail. They are deemed to have waived compliance with order 21 rule 1 of the *Civil Procedure Rules* which requires that all judgments and rulings be pronounced in open court.

**HON. LUCY N. MBUGUA**

**ELC JUDGE**