



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT CHUKA

CHUKA ELC MISCELLANEOUS APPLICATION CASE NO. 04 OF 2020

M'NYERI M'RINKURI APPLICANT/INTERESTED PARTY

VERSUS

BERNARD GITARI MUGERA.....1ST RESPONDENT

IGNATIUS MUTEKI MUGA.....2ND RESPONDENT

THE DIRECTOR LAND ADJUDICATION &

SETTLEMENT3RD RESPONDENT

THE DEPUTY COUNTY

COMMISSIONER MERU SOUTH.....4TH RESPONDENT

THE DISTRICT LAND REGISTRAR MERU SOUTH.....5TH RESPONDENT

THE HONOURABLE ATTORNEY GENERAL.....6TH RESPONDENT

RULING

1. The Notice of Motion in this application states that it has been brought under sections 4, 13 and 19 of the Environment and Land Court Act, Section 29(1) of the Land Adjudication Act, sections 1A, 1B, 3A and 18(1) (b) of the Civil Procedure Act, Order 51 Rules 1 and 10 of the Civil Procedure Rules, Article 159(2) (b) (d) and e of the Constitution of Kenya and all other enabling provisions of the law.

2. The application seeks the following orders:

1.THAT due to the nature and the Urgency of the Instant application, the same be heard on priority basis.

2.THAT this Honourable Court be pleased to withdraw an Appeal to the Minister (*read Meru South Appeal No. 1 of 2017*), and thereafter transfer the same to this Honourable Court for hearing and final disposal.

3.THAT upon the said Appeal being transferred to this Honourable Court, this Honourable Court be pleased to dismiss the same on the grounds that **it was filed out of time therefore violating Section 29 (1) of the Land Adjudication Act, Cap 284 Laws of Kenya.**

4.THAT the Restrictions Registered on the Applicant's/Interested Party's LR. MAREMBO/RIANTHIGA/264 be lifted and the District Land Registrar Meru South, (the 5th Respondent in the Instant application), be directed to issue the Applicant/Interested Party with the Title Deed in respect of **LR. MAREMBO/RIANTHIGA/264.**

5.THAT the cost of this application be provided for.

3. The application has the following grounds:

a) THAT the 1st Respondent instituted Meru South Appeal No. 1 of 2017 against the 2nd Respondent and who was not the Owner of

Parcel No. 264 MAREMBO/RIANTHIGA ADJUDICATION SECTION.

b) THAT the 1st Respondent's Meru South Appeal No. 1 of 2017 is incompetent as it violates *Section 29 (1) of the Land Adjudication Act, Cap 284 Laws of Kenya*.

c) THAT the 1st Respondent did not institute any Appeal against the applicant/Interested Party despite the Applicant/Interested Party being registered with Parcel No. 264 MAREMBO/RIANTHIGA ADJUDICATION SECTION, subject of the Meru South Appeal No. 1 of 2017.

d) THAT the Respondent in Meru South Appeal No. 1 of 2017 denounced the 1st Respondent's claim and further declared that he had no interests on the applicant's/Interested Party's Parcel No. 264 MAREMBO/RIANTHIGA ADJUDICATION SECTION.

e) THAT the 1st Respondent has never set foot on the Applicant's LR. MAREMBO/RIANTHIGA/264.

f) THAT the 1st Respondent's Meru South Appeal No. 1 of 2017 deserves to be dismissed for Want of Prosecution, and for being incompetent and further Restrictions imposed on LR. MAREMBO/RIANTHIGA/264 be lifted so as to facilitate the issuance of the Title Deed to the Applicant/Interested Party.

g) THAT unless the Orders sought are granted, the Applicant/Interested Party, stands to suffer irreparable loss and damage.

4. The application is buttressed by the affidavit of M'Nyeri M'Rinkuri, the Interested Party, which was sworn on **19th February, 2020** AND which states:

SUPPORTING AFFIDAVIT.

I, M'NYERI M'RINKURI of Post Office Box 245-60400 Chuka and in the Republic of Kenya, make oath and state as follows:-

1. **THAT** I am the Applicant/Interested Party in the Instant application, hence competent to make and swear this affidavit.

2. **THAT** I am the legally Registered Owner of all that Parcel of Land known and described as MAREMBO/RIANTHIGA ADJUDICATION SECTION FRAGMENT NO. 264. (*Annexed find a copy of the Certified Copy of the Adjudication Register and marked "MM 1"*).

3. **THAT** the 1st Respondent instituted an Appeal to the Minister (*read Meru South Appeal No. 1 of 2017*) against the 2nd Respondent by claiming Ownership to Parcel No. 264/MAREMBO/RIANTHIGA ADJUDICATION.

4. **THAT** Parcel No. 264 MAREMBO/RIANTHIGA ADJUDICATION SECTION is my property and the 1st Respondent grossly erred in instituting an Appeal against the 2nd Respondent and who was not the Owner of the subject matter (*read Parcel No. 264 MAREMBO/Rianthiga Adjudication Section*) of the Appeal.

5. **THAT** the 2nd Respondent denounced the 1st Respondent's claim and further stated that he had no interests or claims against my LR. 264 MAREMBO/RIANTHIGA ADJUDICATION SECTION. (*Annexed find a copy of the letter addressed to the Land Adjudication Officer declaring that he has no interest over my LR. 264 MAREMBO/RIANTHIGA ADJUDICATION SECTION and marked "MM 2"*).

6. **THAT** since the filing of the Meru South Appeal No. 1 of 2017, the 1st Respondent has not taken out any step to prosecute the same and therefore the 1st Respondent's Meru South Appeal No. 1 of 2017 deserves to be dismissed for Want of Prosecution and further for being gross abuse of Court process.

7. **THAT** my Advocates on record, have duly advised me and which advise I verily believe to be sound that the 1st Respondent's Meru South Appeal No. 1 of 2017 was filed out of time and without the requisite Leave of the Court and therefore the Appeal offends the *Provisions of Section 29 (1) of the Land Adjudication act, Cap 284 Laws of Kenya* thereby rendering the 1st Respondent's Meru South Appeal No. 1 of 2017 incompetent.

8. **THAT** the foregoing clearly demonstrates that the Meru South Appeal No. 1 of 2017 does not deserve to see the light of the day and the consequence thereof is for it to be dismissed for being an abuse of Court process.

9. **THAT** the 1st Respondent and who does not reside nor has ever resided on LR. MAREMBO/RIANTHIGA/264, won't suffer any prejudice if the Orders sought are granted.

10. **THAT** the contents of my affidavit are true to the best of my knowledge, believe and information.

SWORN by the said M'NYERI M'RINKURI at **EMBU. this 19th day of Febryary, 2020.**

5. On **22nd September, 2020**, this court directed the applicant to file written submissions within 14 days thereof and the other parties to do so

within 14 days after receipt of the applicants' submissions. Parties were directed to come back to court for directions on **21st October, 2020**.

6. On **21st October, 2020**, only the 1st respondent had filed written submissions. The Interested Party's advocate told the court that he had not filed his submissions because Mr. Kiongo for the AG and the advocate for the **3rd to 6th respondents** had informed him that the apposite appeal to the minister was about to be finalized. I do not accept this as a cogent explanation for the non-filing of the Interested Party's written submissions. Of course, Mr. Kiongo, can explain his failure to file written submissions by simply saying that he could not do so until he received the applicant's written submissions. Nevertheless I find it unharmed to reproduce in full herebelow and, without any alterations whatsoever, the 1st Respondent's written submissions.

1ST RESPONDENT'S SUBMISSIONS

My Lord this matter was brought by way of an Application where the Applicant is requesting for withdrawal of an appeal to the Minister and the same suit be transferred to this Honourable Court and thereafter order its dismissal on grounds that the same was filed out of time contrary to the Land Adjudication Act, Cap 284 in relation Land Parcel MAREMBO/RIANTHIGA/264.

My Lord, Land Parcel MAREMBO/RIANTHIGA/264 is an ancestral parcel of land and the same forms part of an Adjudication Section that belonged to my father one Mugera Kibibu since the year 1940s. The said parcel had been bequeathed to Mugera Kibibu by our late great grandfather one Njagi Masiri. He had been cultivating on the said parcel of land since time immemorial up to when he allotted the same to my elder brother Bernard Gitari (Deceased). My brother cultivated on the parcel of land and extensively developed the same by planting commercial trees e.g Grivellia trees and also carried out subsistence farming without any interference till the year 2004 when there emerged a land dispute.

We filed the dispute at the Committee being case No. 88 of 2010 and the same was heard and determined in favour of my brother. The Committee ordered that Ignatius Mutegi who is the 2nd Respondent herein be deleted from the Adjudication register at the Adjudication's office.

The dispute then spilled over to Objection case no. 210 of 2010 where a decision was given on the 14th day of December, 2010. The Objection proceedings were heard and

determined whereby the Applicant was awarded 1/3 of the parcel in contention while the 2nd Respondent was awarded 2/3 of the parcel in question. We were again aggrieved by the findings dated the 14th day of December, 2010 by the Adjudication Officer and we then lodged an appeal to the Minister. In regard to that decision, this triggered the appeal to the minister in the year 2011 that had been filed by then Bernard Gitari (Deceased) which case is still pending hearing and determination. The cause of the delay My lord was constituted by the demise of the appellant at the Minister who passed on later in the year 2011 post lodging the appeal at the Minister. We have been following up with the proceedings at the District Commissioner's office, and the response that we have been getting is that no committee had been formed to preside and determine the matter. It is at this point My Lord, that the applicant brought this Application before this Honourable Court and the same would be said to have been brought with unclean hands.

My Lord the Applicant has annexed an Adjudication record to his Supporting Affidavit stating that he was declared the registered owner of the parcel in contention. The same document has been cancelled, scribbled illegally, fraudulently to have the name of Bernard Mugera deleted who was declared the legal owner of the parcel during the proceedings at the Adjudication Board dated the 15th day of April, 2010.

My Lord we cannot fail to note that the applicant has not exhausted all the remedies provided for in an adjudication dispute. Section 30 of the Land Adjudication Act, provides that consent is to be sought from the Adjudication Officer before any civil proceedings are entertained in any Honourable Court. The Applicant has not attached any document verifying that indeed he sought consent before reaching out to this avenue of this Honourable Court. It is not in doubt that the process of adjudication is ongoing and that the adjudication register has not been closed. In absence of the foregoing, it would then be conclusive to say that this court lacks jurisdiction to delve into the matter.

My Lord the application is based upon a misapprehension in that there is always a procedure for challenging any adjudication that culminates in an appeal to the Minister and the Applicant does not appear to have availed himself of that procedure and no reasons have been given for not doing so. As if that is not enough, there is no power bestowed upon this Honourable Court to withdraw an appeal to the Minister that has been lodged by an aggrieved party and in this scenario regarding his parcel of land MAREMBO/RIANTHIGA/264 ADJUDICATION SECTION.

We therefore pray that this Honourable Court do dismiss the Application for it lacks merit and the same is an abuse of the court process.

The Applicant ought to await the decision of the District Commissioner in regard to the Objection lodged at the Minister over the parcel of land.

We humbly pray.

DATED AT CHUKA 27TH .THIS DAY OF SEPTEMBER, .2020

FREDRICK MUTEKI NJOKA

1ST RESPONDENT

7. Mr. Kiongo, the counsel representing the 3rd to 6th respondents, was not in court to confirm the statement by the applicant's advocate that the Appeal to the minister was on its final stretch.

8. Having carefully considered the pleadings by the parties, I hesitate to delve into the issues raised in the 1st respondent's written submissions as they touch on issues which should be canvassed at the Appeal to the minister or in an appeal in this court if the matter is finally escalated to this court.

9. I find that the best way of fast tracking this matter is to have the appeal to the minister concluded. Some of the prayers in the application such as prayer 3 would best be handled in an appeal or in Judicial Review proceedings after the appeal to the minister is concluded.

10. In the circumstances, I am inclined to disallow this application.

11. Therefore, this application is hereby dismissed.

12. I award no costs to any of the parties.

Delivered in open court at Chuka this **18th day of November, 2020** in the presence of:

CA: Ndegwa

Kirimi Muturi for the Applicant/Interested party

AG absent for 3rd,4th,5th & 6th Respondents

P. M. NJOROGE,

JUDGE.