



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT CHUKA

CHUKA ELC CASE NO. 11 OF 2020

DESDERIO NYAGA NYAMU.....PLAINTIFF

VERSUS

THE LAND REGISTRAR THARAKA NITHI DISTRICT.....1ST DEFENDANT

THE DISTRICT SURVEYOR MERU SOUTH DISTRICT.....2ND DEFENDANT

DIRECTOR OF SURVEYS.....3RD DEFENDANT

THE CHIEF LAND REGISTRAR.....4TH DEFENDANT

THE ATTORNEY GENERAL.....5TH DEFENDANT

JUDGMENT

1. In his plaint dated **21st August, 2020**, the plaintiff prays for judgment against the defendants jointly and severally for:

- a) An order for declaration that the creation and inserting of road of access measuring 30ft by 420ft in the registry index map sheet No. 13 Karingani Ndagani in the plaintiff's land parcel No. Karingani/Ndagani/5622 is illegal, unlawful, fraudulent, null and void ab initio.
- b) An order requiring the 1st, 2nd, 3rd and 4th defendants to delete the road of access measuring 30 ft by 420 ft created and inserted on the plaintiff's land parcel No. Karingani/Ndagani/5622 from the registry index map sheet No. 13 Karingani Ndagani and / or from any other registry index map sheet in the possession of the 1st, 2nd, 3rd and 4th defendants.
- c) An order requiring the 1st, 2nd, 3rd and 4th defendants to amend registry index map sheet No. 13 Karingani Ndagani and / or from any other registry index map sheet in the possession of the 1st, 2nd, 3rd and 4th defendants and reinstate the boundary so that it conforms and reflects the correct boundary of the plaintiff's land parcel No. Karingani/Ndagani/5622 as it exists on the ground and as per mutation form No. 133516 duly signed by the original owner of land parcel No. Karingani/Ndagani/5 one Antony Nyamu M'Rikiri now deceased and registered in the 1st defendant's land registry on 5.11.2003.
- d) Costs of the suit.
- e) Any other relief the court may deem just and fit to grant.

2. In a letter dated **15th September, 2020**, the National sub-county surveyor, Chuka agreed that the plaintiff's claim had validity.

3. On **28th October, 2020** Mr. Kiogora Arithi, the plaintiff's advocate and Mr. Justin Kiongo, the defendants' advocate proffered a consent which they asked the court to adopt as its order. The consent is in the following terms:

Kiogora A plaintiff/applicant

Kiongo defendant/respondent

By consent of the plaintiff and the defendants and their clients respectively we agree that, the road on parcel No. Karingani/Ndagani/5622 be cancelled since there is a road of access to parcel No. Karingani/Ndagani/1431. The surveyor to be allowed 60 days to implement this

consent. Upon implementation the matter be marked as settled with no orders as to cost.

Kiogora A for applicant 28.10.2020

Kiongo for defendants 28.10.2020

4. The consent was properly executed by the advocates representing the parties.

5. In the circumstances, I enter judgment for the plaintiff against the defendants in the following terms:

a) An order is hereby issued declaring that the creation and inserting of a road of access measuring 30 feet by 420 feet in the Registry Index Map Sheet No. 13 Karingani Ndagani in the plaintiffs Land Parcel No. KARINGANI/NDAGANI/5622 is illegal, unlawful, fraudulent, AND null and void ab initio.

b) An order is hereby issued requiring the 1st, 2nd, 3rd and 4th defendants to delete the road of access measuring 30 feet by 420 feet created and inserted on the plaintiff's LAND PARCEL NO. KARINGANI/NDAGANI/5622 FROM THE Registry Index Map Sheet No. 13 Karingani Ndagani and/or from any other Registry Index Map Sheet in the possession of the 1st, 2nd, 3rd and 4th defendants.

c) An order is hereby issued requiring the 1st, 2nd, 3rd and 4th defendants to amend Registry Index Map Sheet No. 13 Karingani Ndagani and / or from any other Registry Index Map Sheet in the possession of the 1st, 2nd, 3rd and 4th defendants and reinstate the boundary so that it conforms and reflects the correct boundary of the plaintiffs LAND PARCEL NO. KARINGANI/NDAGANI/5622 as it exists on the ground and as per Mutation Form No. 133516 duly signed by the original owner of LAND PARCEL NO. KARINGANI/NDAGANI/one ANTONY NYAMU M'RIKIRI (now deceased) and registered in the 1st defendants name at the Land Registry on 5.11.2003.

d) As agreed in the consent adopted as its order by the court on **28th October, 2020**, the 2nd defendant and all other defendants are granted a maximum of 60 days to implement the orders contained in this judgment.

e) Parties will bear their own costs, and, therefore, there is no order as to costs.

Delivered in open Court at Chuka this 4th day of November, 2020 in the presence of:

CA: Ndegwa

Kiongo for the defendant

Kiongo h/b Kiogora Arithi for the plaintiff

P. M. NJOROGE,

JUDGE.