



**REPUBLIC OF KENYA**

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

**ELC PETITION NO. 26 OF 2019**

**IN THE MATTER OF ARTICLE 3, 10, 12, 19, 20, 21, 22, 23, 24, 27, 28, 40, 47,**

**48, 50, 60, 61, 64 & 68 OF THE CONSTITUTION OF KENYA 2010**

**AND**

**IN THE MATTER OF THE CONSTITUTION OF KENYA (PROTECTION OF RIGHTS  
AND FUNDAMENTAL FREEDOMS) PRACTICE AND PROCEDURE RULES 2013**

**AND**

**IN THE MATTER OF THE LAND CONSOLIDATION ACT, CAP 283 LAWS OF KENYA**

**AND**

**IN THE MATTER OF THE LAND ADJUDICATION ACT, CAP 283 LAWS OF KENYA**

**AND**

**IN THE MATTER OF THE LAND ADJUDICATION ACT, CAP 284 LAWS OF KENYA**

**BETWEEN**

**ANDREW MUREGA M'ITIAME.....PETITIONER**

**VERSUS**

**THE LAND REGISTRAR, IGEMBE CENTRAL**

**DISTRICT.....1<sup>ST</sup> RESPONDENT**

**THE ADJUDICATION OFFICER,**

**ATHIRU RUUJINE ADJUDICATION SECTION.....2<sup>ND</sup> RESPONDENT**

**THE HON. ATTORNEY GENERAL.....3<sup>RD</sup> RESPONDENT**

**AND**

**ISAIYAH M'ITUMITU M'MWITHIA.....INTERESTED PARTY**

**LUKA KABERIA MITHIKA.....2<sup>ND</sup> INTERESTED PARTY**

**PHILIP MUTUMA NCOORO.....3<sup>RD</sup> INTERESTED PARTY**

JULIUS KIRIMI MWENDA.....4<sup>TH</sup> INTERESTED PARTY

BONIFACE MUNGATHIA GITONGA.....5<sup>TH</sup> INTERESTED PARTY

DAVID MAORE M'MWITHIA.....6<sup>TH</sup> INTERESTED PARTY

### RULING

1. Before me is a notice of motion filed contemporaneously with the petition dated 16.11.2019. The petitioner/applicant is seeking orders of injunction restraining the interested parties and their agents from using or interfering with land parcel no. 4241 and 5744 Athiru Rujine Adjudication section, ( the suit parcels) until this suit is heard and determined. The petitioner also desires that there be a stay of the proceedings in Maua CM-ELC No. 180 of 2019 pending the hearing and determination of this petition.

2. The grounds in support of the application are that the petitioner has been in occupation of the aforementioned suit parcels for more than 50 years, where he has established his homestead for his family. The interested parties have however illegally, fraudulently and without any colour of right caused the petitioner's property to be subdivided and are now threatening to evict him with his children.

3. In his submissions, the applicant has reiterated the contents of his affidavits and his petition. He emphasizes that his family has only known one home which is the suit land.

4. The interested parties have opposed the application vide the replying affidavit of Philip Mutuma, the 3<sup>rd</sup> interested party. They aver that there was a succession cause no. 633 of 2015 in Meru High court which gave rise to the subdivision of the original parcel no. 4241 into 4 parcels namely 5744, 5902, 5897 and 4241. Thereafter, a title deed was issued to 2<sup>nd</sup> and 5<sup>th</sup> interested parties in respect of parcel 4241, while Julius Kirimi Mwenda (4<sup>th</sup> Interested party) acquired parcel 5744. The interested parties contend that the applicant is misleading the court and that the objection case, No's 843 and 1043 have no bearing to the proceedings herein.

5. In their submissions the interested parties contend that the petitioner has failed to satisfy the parameters set out for a grant of the orders sought.

#### Determination

6. I have considered all the issues raised herein including the submissions of the parties and I find that there are 4 pertinent issues which adversely affect the claim of the applicant.

7. Firstly, I find that there is a land ownership dispute as between the parties (petitioner and interested parties). The 1<sup>st</sup> prayer in the petition is framed as follows:

***“A declaration that the petitioner is the absolute owner of land parcel No. 5744 Athiru Ruujine Adjudication section measuring 2.48 acres”.***

8. This means that the applicant's rights and interests in the suit land have not crystallized. The petitioner has chosen the path of a constitutional petition to ascertain such rights and interests. – **See John Mukora Wachihhi vs Minister for land & 6 others Petition 82 of 2010 Nairobi.** It follows that the dispute ought to be resolved in an ordinary suit to ascertain the issue of ownership of the suit parcels.

9. The second issue for consideration is that the petitioner's claim appears to be based on decisions/Judgment delivered 25 years ago in 1995! The applicant needs to establish the nexus between the proceedings of 1995 availed as annexure “AMMI” and “AMM 2” and the current claim. The petitioner also needs to clarify as to why it took him 25 years to attempt to enforce those decisions.

10. Thirdly, I find that granting the orders sought for at this stage would in essence interfere with the decision in the succession court no. 633 of 2015 where the suit land was distributed.

11. Finally, I find that the petitioner was sued in Maua ELC case no. 180 of 2019 vide a plaint filed on 23.9.2019. The petitioner's defence or counterclaim has not been exhibited herein. He has not given any plausible account as to why he filed this suit just few days after he was sued in the Maua court.

12. The logical conclusion to make is that this suit was filed as a way of stalling the Maua case. Indeed, the petitioner has sought orders for a stay of proceedings in that case. He however ought to subject himself before the trial court in Maua so as to ventilate his claim of ownership of the suit land.

13. In the final analysis it is clear from the material presented before me that the petitioner has not established a prima facie case as defined in **Mrao vs First American Bank of Kenya Ltd and Two others (2003) KLR 125.**

14. The application dated 16.10.2019 is hereby dismissed with costs to the interested parties.

**DATED, SIGNED AND DELIVERED AT MERU THIS 4<sup>TH</sup> DAY OF NOVEMBER, 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 29.9.2020. 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**