



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT CHUKA

CHUKA ELC CONSTITUTION PETITION CASE NO. E002 OF 2020

IN THE MATTER OF MARIMANTI MAGISTRATES COURT CRIMINAL CASE NO. 540 OF 2020

AND

IN THE MATTER OF ARTICLES 2(1), 3(1), 10, 19, 20, 21, 22, 23, 25, 27,

48, 50, 157, 165(6) AND 245 OF THE CONSTITUTION OF KENYA

AND

IN THE MATTER OF VIOLATION OF ARTICLES 50(2) (C) AND 40 OF THE CONSTITUTION OF KENYA

AND

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

BETWEEN

WILLIAM MUTUURA KAIRIBIA.....1ST PETITIONER

FELIX GITONGA NTHIGA MUTUURA.....2ND PETITIONER

VERSUS

INSPECTOR GENERAL OF POLICE.....1ST RESPONDENT

DIRECTOR OF PUBLIC PROSECUTIONS.....2ND RESPONDENT

SENIOR PRINCIPAL MAGISTRATE, MARIMANTI.....3RD RESPONDENT

THE COUNTY LAND REGISTRAR THARAKA NITHI COUNTY.....4TH RESPONDENT

THE COUNTY SURVEYOR THARAKA NITHI COUNTY.....5TH RESPONDENT

COUNTY GOVERNMENT OF THARAKA NITHI.....6TH RESPONDENT

THE DIRECTOR OF SURVEYS.....7TH RESPONDENT

ELIJAH MUTHURI MURIUNGI.....8TH RESPONDENT

DISTRICT LAND ADJUDICATION AND SETTLEMENT OFFICER...9TH RESPONDENT

RULING

1. On **16.12.2020**, advocate Kabathi, for the petitioners told the court that the petitioners and the 1st and 2nd respondents had a consent which they wanted the court to adopt as its order. The consent reads as follows:

Consent

Mr. Kabathi for the 1st and 2nd petitioners

Mr. Momanyi for the 1st and 2nd respondents

By consent

That the petition be marked as settled as against the 1st and 2nd respondents on the following terms.

1. That the proceedings in Marimanti Criminal Case No. 540 of 2020 be withdrawn under section 87 (a) of the Criminal Procedure Code.
2. That the 1st and 2nd Respondents be removed from these proceedings.
3. There be no order as to costs.

Signed by Mr. Kabathi for the petitioners

Signed by Mr. Momanyi for the 1st and 2nd respondents

Dated at Chuka this 16th day of December, 2020

2. Mr. Atheru, the 8th respondents' advocate told the court that he had filed a Notice of Preliminary objection. The Notice reads as follows:

NOTICE OF PRELIMINARY OBJECTION

TAKE NOTICE that the 8th respondent shall on 16th December, 2020 or so soon thereafter when this suit shall come up for any hearing raise preliminary objection on points of law persuading this honourable court to dismiss the entire suit with costs to him on the grounds that:-

1. The honourable court lacks jurisdiction to hear this case for being res judicata both Chuka High Court ELC Case No. 8 of 2018 (William Mutuura Kairiba –vs- Samuel Nkari, Samuel Kathiga & Daniel Mugao) and Chuka ELC Suit No. 13 of 2019 William Mutuura Kairiba – versus – Samuel Nkari, Samuel Kathiga, Daniel Mugao, Francis Ruteere & The County Government of Tharaka Nithi).
2. The honourable court lacks jurisdiction to hear this case for lack of the mandatory statutory consent to file this case by dint of section 8 of the Land Consolidation Act, Cap 283 and section 30 of the Land Adjudication Act, Cap 284 Laws of Kenya.
3. The plaintiff did not exhaust the remedies set out at sections 13, 14 and 26 of the Land Consolidation Act, Cap 283 and Section 26 and 29 of the Land Adjudication Act, Cap 284 Laws of Kenya.
4. The application dated 25.11.2020 is fatally defective.

DATED AT MERU THIS 15TH DAY OF DECEMBER, 2020

SIGNED.....

FOR: THURANIRA ATHERU & CO.

ADVOCATES FOR THE 8TH RESPONDENT

3. Upon hearing the parties, the following orders are issued:

- a) **The** Preliminary Objection filed by the 8th respondent and dated 15th December, 2020 be heard first with the proponent who is the 8th respondent filing and exchanging his written submissions within 21 days of today and the other parties doing so within 21 days after receipt of the 8th respondent's submissions.
- b) **The** consent between the petitioners and the 1st and 2nd respondents dated 16.12.2020 is adopted as an order of this court.
- c. **Interim** orders extended pending interpartes hearing of the application.

d.Mention for directions on **1.2.2021**.

Delivered in open Court at Chuka this 16th day of December, 2020 in the presence of:

CA: Ndegwa

Kabathi for the petitioners

Momanyi for the 1st and 2nd respondents

Atheru for the 8th respondent

P. M. NJORGE,

JUDGE.