



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT CHUKA

CHUKA ELC CASE NO. 12 OF 2019

PETER KAARIA.....1ST PLAINTIFF

FREDRICK GITONGA MATI.....2ND PLAINTIFF

VERSUS

ALBERT MUSYOKA MURIUNGI.....DEFENDANT

JUDGMENT

1. In his plaint dated 20th day of June, 2019, the plaintiffs pray for orders against the defendant in the following terms:

- a) An injunction to restrain the defendant by himself, his servants and/or agents or otherwise from remaining, building, or continue to occupy LR MERU SOUTH/KAMWIMBI "A"2174.
- b) An order for the forcible demolition of the building structure on LR MERU SOUTH/KAMWIMBI "A" 2174.
- c) An eviction order to remove the defendant from the occupied portion of LR MERU SOUTH/KAMWIMBI "A"2174 and evicting the defendant all together from the disputed land.
- d) An order directed to the OCS Chuka Police Station to provide security for the forcible removal of the defendant all together from the disputed land.

2. PW1, Fredrick Gitonga Mati, asked the court to adopt his witness statement dated 14th August, 2019 as his evidence in this suit. The said statement reads as follows:

WITNESS STATEMENT FOR THE 2ND PLAINTIFF

I am FREDRICK GITONGA MATI. I live at Kabururu Village in Kamwimbi "A" Adjudication Section. I am the registered owner of the land parcel No. MERU SOUTH/KAMWIMBI "A"/985 in trust for himself (sic) and in trust for me and my brothers. That is as far as this history may be relevant to my claim that the defendant (ALBERT MUSYOKA MURIUNGI) be evicted from Peter Kaaria's land MERU SOUTH. KAMWIMBI "A" 2174 be demolished and the defendant be evicted from the land.

The defendant's land is unregistered he has not completed the adjudication process. He should be confirmed in his land. His land parcel **MERU SOUTH/KAMWIMBI "A" 1832**. The lands are not adjacent to one another. The defendant is at trespasser on Kaaria's land. This is not a boundary dispute but a flagrant Act of aggression and trespass. I do pray that this court removes him from the land so that he can go to his piece of land **MERU SOUTH/KAMWIMBI "A" 1832**.

I also wish to state that the land MERU SOUTH/KAMWIMBI "A" 2174 has no pending case to the minister and that it is an absolute title.

The defendant is introducing in his defence the question on parties who are not before this court bearing in mind the registered parcel of land belonging to Kaaria is protected by Law within the meaning of Section 24 of the Land Registration Act.

The place where the defendant is building his house is on the Land also blocks the Public road of access between the land and my land that is MERU SOUTH/KAMWIMBI "A" 2170. I pray the defendant be evicted, and the building on the land be ordered to be demolished by this honourable court.

It is erroneous for the defendant to come to court and claim that Ngereni Mathaiya the owner of parcel KAMWIMBI "A"/985 and not been allowed to sub divide his land to the intended beneficiaries as this was granted by DLASO one my Charles M Githinji on 1/9/2016 granting Mr Ngereni Mathaiya permission to subdivide his land into 14 portions (See copy of the decision of DLASO in the list of documents in this matter). The defence is therefore based on a lie that Ngereni Mathaiya did not follow the due process to obtain the titles.

The titles in contention that is MERU SOUTH/KAMWIMBI "A"/2170 and MERU SOUTH/KAMWIMBI "A"/2174 are valid and indefeasible titles. It is now time that the defendant is forced out of the 1st plaintiff's land and the illegal structure removed.

It is important for this court to note that the defendant had been warned many times to vacate but persisted in his illegal occupation yet he knows his land is KAMWIMBI "A" 1832.

Peter Kaaria did not take part in the Adjudication process has he got his land from the said Ngereni Mathaiya who also gave me the land parcel No. MERU SOUTH/KAMWIMBI "A" 2170 and I know he has never had any case with the defendant during the Adjudication process so he should be ordered to leave the land. That parcels No. MERU SOUTH/KAMWIMBI "A" 2170 and MERU SOUTH/KAMWIMBI "A" 2174 have no appeals to the Minister as alleged or at all.

I do pray for the costs of the suit.

Dated at Chuka this..... 14thDay ofAugust.....2019.

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FREDRICK GITONGA MATI

3. PW1, Fredrick Gitonga Mati, the 2nd Plaintiff asked the court to adopt his witness statement dated 14th August, 2019 as his evidence in this suit. He asked the court to accept his supporting affidavit dated 20th June, 2018 as part of his evidence. He also asked the court to consider his list of documents dated 14th August, 2019 as his exhibits. The documents were marked as Plaintiff's Exhibits numbers 1 to 5.

4. PW1 referred to a map that showed parcel No. 2174 that belonged to his brother and explained that is where the defendant was putting up a building. He showed the court parcel No. 2170 which is registered in his name. he then showed the court parcel No. 1832 which he said belonged to Albert Musyoka Muriungi, the defendant.

5. PW1 told the court that parcel No. 1832 and Parcel Numbers 2170 and 2174 were far apart. He went on to tell the court that the defendant's father was owner of parcel 802 which is next to parcel No. 1832 that belongs to the defendant. Generally he gave evidence concerning adjoining parcels and said that his land and that of his brother did not have any pending appeals to the Minister.

6. PW1 admitted that there were restrictions registered against parcels of land which emanated from parcel No. 985. He explained that subdivisions which spanned the suit land had been sanctioned by the District Land Adjudication and Settlement Officer (DLASO). During re-examination, PW1 told the court that parcel No. 2174 belonged to his younger brother Peter Kaaria and had no pending appeal to the Minister. He reiterated that both his parcel of land number 2170 and his brother's parcel No. 2174 had titles. He further reiterated that Parcel Number 1832 was not in the same place as Parcel Numbers 2170 and 2174. He said that parcel No. 1832 had no title.

7. DW 1, Albert Musyoka Muriungi, asked the court to adopt his witness statement dated 13th August, 2019 as his evidence in this suit. The statement which is reproduced here below without any alterations reads as follows;

DEFENDANT STATEMENT

1. My name is ALBERT MUSYOKA MURIUNGI.

2. I come from Kabururu Village, Kiaritha Sublocation, Kamwimbi Location Meru South Sub County. I am a business man, cum-farmer. I know the plaintiffs, they are sons of SABASTIAN M'BUNDI. They are also residence(sic) of Kabururu Village, Kiaritha Location Meru South Sub County. They also do farming and they also carry on business. Adjudication process in Kamwimbi A Adjudication Section commenced in 1993. Demarcation took place when I was young but I could follow what my father and other elders were doing. However I was not actively involved in the adjudication pa-se (sic). as I grew up I came to know how the adjudication process were carried out particularly concerning my fathers land 802 Kamwimbi A Adjudication Section and 803 Kamwimbi A Adjudication Section the property of my uncle one M'NYIRI RIUNGU.

3. As I grew older I got documents and information which can be traced to the filing of this suit. My father MURIUNGI M'THINGUNKU walked the boundaries of the then 802 Kamwimbi A Adjudication Section. my uncle walked the boundaries of 803 Kamwimbi A Adjudication Section. I will start with the adjudication process of 803 Kamwimbi A Adjudication Section which spill over to 802 Kamwimbi A Adjudication Section.

4. After my uncle M'NYIRI RIUNGU walked the boundaries of 803 Kamwimbi A Adjudication Section M'NGERENI MATHAIYA registered an objection at the land committee against M'NYIRI RIUNGU. That M'NGERENI MAITHAYA is not related to M'NYIRI RIUNGU who had walked the boundaries of 803 Kamwimbi A Adjudication Section. The said M'NGERENI MATHAIYA is an uncle to the plaintiffs. The father of the plaintiffs is known as SABASTIAN M'BUNDI, the said SABASTIAN M'BUNDI did not object to M'NYIRI RIUNGU being recorded with 803 Kamwimbi A Adjudication Section. That neither the plaintiffs nor their father filed any objection at committee level against land parcel 803 Kamwimbi A Adjudication Section. That

NGERENI M'MATHAIYA was given a portion of 803 Kamwimbi A Adjudication Section. DOMIC MWANGANGI who appeared on behalf of M'NYIRI RIUNGU was given 14 days right of appeal. DOMIC MWANGANGI on behalf of M'NYIRI RIUNGU appealed to arbitration board.

5. At arbitration board level M'NGERENI MATHAIYA was awarded 985 Kamwimbi A Adjudication Section which was excised from 803 Kamwimbi A Adjudication Section.

6. During 60 days objection (AR) M'NYIRI RIUNGU filed an objection against 985 awarded to M'NGERENI M'MATHAYIA while M'NGERENI M'MATHAYIA filed an objection against land parcel 803 awarded to M'NYIRI RIUNGU. This was objection no.31 against land parcels 985 and 803. The decision of the AR objection M'NGERENI MATHAIYA was to retained 985 Kamwimbi A Adjudication Section while M'NYIRI RIUNGU was to retained 803 Kamwimbi A Adjudication Section.

7. M'NYIRI RIUNGU appealed to the minister in respect of AR objection in land parcel 985 Kamwimbi A Adjudication Section on the other hand M'NGERENI MATHAYIA appealed to the minister in respect of land parcel 803 Kamwimbi A Adjudication Section. The appeals to the minister are still pending. The DLASO after hearing the AR objections in respect of 803 and 985 Kamwimbi A Adjudication Section gave NGERENI M'MATHAIYA liberty to share land parcel 985. However, in scheme that was fraudulent and dishonest the said NGERENI M'MATHAYIA was given the right to have his boundaries collected using an objection by NJAGI NJOKA, this was objection no 265 against land parcel 802. M'NGERENI MATHAIYA objection against land parcel 802 was dismissed, this was objection no.39 . This is where the said NGERENI M'MATHAYIA got a chance to interfere with my fathers land 802 Kamwimbi A Adjudication section. NGERENI M'MATHAYIA then enters and encroached into a land parcel no.802 belonging to my father MURIUNGI M'THINGUNKU. That only parcel no.2170 Kamwimbi A Adjudication Section was excised from 985 Kamwimbi A Adjudication Section, all the other land parcels namely no.985,2171,2177,2173,2172,2176,2178,2175,2183,2179,2181 ,2180 and 2182 Kamwimbi A Adjudication Section. These parcels of land were therefore unlawfully and illegally excised from land parcel 802 Kamwimbi A Adjudication Section. The suit lands 2170 and 2174 therefore were illegally and fraudulently excised, created and given their numbers without an objection authorizing the same. This is why I am stating that the subdivisions were carried on paper only not even the demarcation officer ever visited 802 Kamwimbi A Adjudication Section.

8. To my knowledge and information 802 Kamwimbi A Adjudication Section was walked the boundaries by MURIUNGI M'THINGUNKU. I came to know that there was a problem with my fathers land Kamwimbi A Adjudication Section. When I purchased the map sheet that covered 802 Kamwimbi A Adjudication Section. I compared the original map and the most recent one and found that 802 Kamwimbi A Adjudication Section have been sub divided into 14 parcels. There was no objection to legalize the subdivisions. it was out of this illegal sub division that NGERENI M'MATHAYIA gave the plaintiffs the suit land. The father of the plaintiffs was not involved in any manner. That at committee level neither the plaintiffs nor their father SABASTIAN MATI BUNDI registered an objection against my father MURIUNGI M'THINGUNKU. My father was therefore recorded with 802 Kamwimbi A Adjudication Section. At arbitration level no one filed an objection against my fathers parcel 802 kamwimbi a adjudication section.

9. That during 60 days objection NGERENI M'MATHAYIA uncle to the plaintiffs and SABASTIAN M'BUNDI the father of the plaintiffs filed an objection against MURIUNGI M'THINGUNKU and against land parcel 802 Kamwimbi Adjudication Section . these are objection no.39 and 25 against land parcel 802 Kamwimbi A Adjudication Section. The two objections were dismissed. after their objections were dismissed the two appealed to the minister. the two appeals to the minister are still pending. This is the reason that am questioning how land parcel 802 Kamwimbi A Adjudication Section would be sub divided before the hearing and determination of the appeal to the minister. The sub division scheme is clearly fraudulent.

10. After realizing that 802 Kamwimbi A Adjudication Section was interfered with, my father MURIUNGI M'THINGUNKU complained first to the local chief. the chief could not sought (sic) out the matter he then referred us to DLASO CHUKA.

11. AT DLASO office, I on behalf of my father MURIUNGI M'THINGUNKU , I was referred to the director land adjudication officer Nairobi. DLASO gave us an introduction letter. After reporting to the director land settlement officer, he gave me a letter to bring back to DLASO CHUKA. After bringing the letter from Nairobi to DLASO CHUKA , I was advised to buy all the searches involving all the land parcels excised from 802 Kamwimbi A Adjudication Section, so that I could know who was actually given what from 802 Kamwimbi A Adjudication Section. I purchased the official searches. DLASO advised the land registry with authority from the director of land adjudication settlement at Nairobi to put restriction on all the parcels on land illegally excised from 802 Kamwimbi A Adjudication Section and during the pendency of an appeal to the minister ‘‘ No dealing shall be registered until the appeal to the minister are finalized’

12. After the 60 days objection were over my father MURIUNGI M'THINGUNKU applied for subdivision of his land Kamwimbi A Adjudication Section. This was before the appeal to the minister were lodged by NGERENI M'MATHAI and SABASTIAN MATI BUNDI. My father paid for subdivision of 802. My father paid after DLASO had agreed with his letter applying to do the sub division. Out of 802 Kamwimbi A Adjudication Section land parcels 1831 ,1832 ,1833 ,1834,1835 ,2071, 2072 and 2073 were generated , my father sub divided 802 kamwimbi a adjudicating SECTION to give the resultant parcels to his sons. That 1832 was heremarked for me. The parcels of land have never been registered due to the appeal to the minister by NGERENI M'MATHAIYA and SABASTIAN MATI BUNDI the father of the plaintiffs. We are still waiting for appeals to the minister to be heard.

13. The plaintiffs may be registered proprietors of land parcels meru south Kamwimbi A 2174 and 2170 respectively ,however their registration is clearly fraudulent . the registration were obtained during the pendency of appeal to the minister which are still pending. Their suit is tainted with fraud and the same should be dismissed with cost to the defendant. The plaintiffs case in other words should be dismissed. I shall be praying for cost of the suit.

14. That is all I wish to states

Signed by **ALBERT MUSYOKA MURIUNGI**

DATED AT CHUKA THIS 13TH DAY OF AUGUST.....2019.

8. DW1, Albert Musyoka Muriungi, the defendant asked the court to adopt his witness statement dated 13th August, 2019 as his evidence in this suit. He also asked the court to make use of his list of documents dated 13th August, 2019 as part of his evidence. The documents were marked as Defendants exhibits Numbers 1 to 12. He referred to document number 10 which was showing parcel No. 822 where he lived and also parcel No. 985 which the plaintiff got through an objection before it was subdivided into 14 parcels. He was unequivocal that all the sub divisions which emanated from parcel No. 985 had restrictions because the sub divisions were done when there was a pending appeal to the Minister. DW1 asked the court to dismiss the suit because Parcel Numbers 2170 and 2174 were obtained fraudulently.

9. DW1 told the court that his house was on Parcel No. 1832 which had been given to him by his father. He was categorical that he had not put up a house on parcel No. 2174. He admitted that Parcel Numbers 2174 and 1832 were a distance away. But he insisted that his land should be where Parcel No. 2174 is. He went on to declare the titles for Parcel Numbers 2170 and 2174 were invalid. He admitted that the restrictions affecting Parcel Numbers 2170 and 2179 were registered in 2018 one year after their titles were issued.

10. DW2, Charles Kimathi Makamba, asked the court to adopt his witness statement dated 13th August, 2019 as his evidence in this suit. He told the court that he was involved in the adjudication process for the area where the land is situated because he represented his father who was deceased. By and large he was supporting the various assertions made by the defendant. His evidence was to a certain extent garbled. For example, he told the court that he did not know the boundaries of Parcel Numbers 2174, 2170 and 1832 which are central to this case which concerns a claim that the defendant has trespassed upon Parcel No. 2174.

11. DW2, Charles Kimathi Makamba, asked the court to adopt his witness dated 13th August, 2019 as his evidence in this suit. The statement reads as follows:

DEFENDANT WITNESSES (SIC) STATEMENT

1. My name is CHARLES KIMATHI MAKAMBA.

2. I come from Kabururu Village, Kiaritha Sublocation, Kamwimbi Location Meru South Sub County. I am a business man, cum-peasant farmer.

3. I know the 1st and 2nd plaintiffs, they are sons of SABASTIAN M'BUNDI. I also know them because they also occupy my fathers land no.818 Kamwimbi A Adjudication Section. They are on this land illegally unlawfully and by force.

4. At RER level, my father the late JUSTUS MAKAMBA walked the boundaries of 818 Kamwimbi A Adjudication Section. No person registered an objection against my late father JUSTUS MAKAMBA being recorded with 818 Kamwimbi A Adjudication Section. The late JUSTUS MAKAMBA therefore was recorded with 818 KAMWIMBI A ADJUDICATION SECTION.

5. During arbitration board hearing one NGERENI MATHAYIA an uncle to the plaintiffs and FREDRICK GITONGA filed an objection against 818 kamwimbi a adjudication section my father was already deceased so I represented them. This was objection no.34. the objection was dismissed. During AR (60 days objection) NGERENI MATHAYIA filed an objection against 818 Kamwimbi A Adjudication Section. By this time JUSTUS MAKAMBA was deceased and I was representing him. This was AR objection no.34. the objection was dismissed. That NGERENI MATHAYIA then appealed to the minister, the land therefore remain unregistered on account of the appeal to the minister.

6. The 1st and 2nd plaintiffs have remained in 818 Kamwimbi A Adjudication Section. The plaintiffs in particular have refused to move to their fathers land. They do not live on land parcel 802 nor 803 Kamwimbi A Adjudication Section.

7. I know the defendant ALBERT MUSYOKA MURIUNGI. He is the son of MURIUNGI M'THINGUNKU. My father had bought 818 Kamwimbi A Adjudication Section from one MANGRU a close relative of the defendant father. As I grew I used to see the defendant, he is older than me. We come from the same village.

8. Am aware that M'NYIRI RIUNGU walked the boundaries of 803 Kamwimbi A Adjudication Section. after M'NYIRI RIUNGU walked the boundaries of 803 kamwimbi a adjudication section. M'NGERENI MATHAYIA registered a dispute against M'NYIRI RIUNGU. THAT AT COMMITTEE LEVEL 803 KAMWIMBI A ADJUDICATION SECTION WAS DIVIDED INTO TWO PARTS 803 and 985 kamwimbi a adjudication section. NGERENI MATHAYIA was given 803 kamwimbi a adjudication section while M'NYIRI RIUNGU retained 803 kamwimbi a adjudication section.

9. That M'NGERENI MAITHAYA is not related to M'NYIRI RIUNGU who had walked the boundaries of 803 Kamwimbi A Adjudication Section. The said M'NGERENI MATHAYIA is an uncle to the plaintiffs. The father of the plaintiffs is known as SABASTIAN M'BUNDI, the said SABASTIAN M'BUNDI did not object to M'NYIRI RIUNGU being recorded with 803 Kamwimbi A Adjudication Section. That neither the plaintiffs nor their father filed any objection at committee level against land parcel 803 Kamwimbi A Adjudication Section. That NGERENI M'ATHAYIA was given a portion of 803 Kamwimbi A Adjudication Section to wit 985 kamwimbi a adjudication section. DOMIC MWANGANGI who appeared on behalf of M'NYIRI RIUNGU was given 14 days right of appeal. DOMIC MWANGANGI on behalf of M'NYIRI RIUNGU appealed to arbitration board. So did NGERENI MATHAYIA. Ngereni FILED OBJECTION AGAINST 803 WHILE DOMINIC on behalf of M'NYIRI filed an objection against 985. At arbitration board level M'NGERENI MATHAYIA was awarded 985 Kamwimbi A Adjudication Section which was excised from 803 Kamwimbi A Adjudication Section.

10. During 60 days objection (AR) M'NYIRI RIUNGU filed an objection against 985 awarded to M'NGERENI M'MATHAYIA while M'NGERENI M'MATHAYIA filed an objection against land parcel 803 awarded to M'NYIRI RIUNGU. This was objection no.31 against land parcel 803 and objection no.377 against land parcel 985 kamwimbi a adjudication section by DOMINIC on behalf of M'NYIRI . the two objection were dismissed , NGERENI MATHAYIA was to retained 985 while M'NYIRI RIUNGU was to retained 803 kamwimbi a adjudication section.

11. The decision of the AR objection M'NGERENI MATHAIYA was to retained 985 Kamwimbi A Adjudication Section while M'NYIRI RIUNGU was to retained 803 Kamwimbi A Adjudication Section. In the other words the arbitration board decision was retained and confirmed by AR (60 DAYS OBJECTION) .M'NYIRI RIUNGU appealed to the minister in respect of AR objection in land parcel 985 Kamwimbi A Adjudication Section on the other hand M'NGERENI MATHAYIA appealed to the minister in respect of land parcel 803 Kamwimbi A Adjudication Section. The appeals to the minister are still pending . The DLASO after hearing the AR objections in respect of 803 and 985 Kamwimbi A Adjudication Section gave NGERENI M'MATHAIYA liberty to share land parcel 985 . however in scheme that was fraudulent and dishonest the said NGERENI M'MATHAYIA was given the right to have his boundaries collected using an objection by NJAGI NJOKA, this was objection no 265 against land parcel 802. M'NGERENI MATHAIYA objection against land parcel 802 had earlier been dismissed , this was objection no.39 . This is where the said NGERENI M'MATHAYIA got a chance to interfere with MURIUNGI M'THINGUNKUS land 802 Kamwimbi A Adjudication section. NGERENI M'MATHAYIA then enters and encroached into a land parcel no.802 belonging MURIUNGI M'THINGUNKU. That only parcel no.2170 Kamwimbi A Adjudication Section was excised from 985 Kamwimbi A Adjudication Section, all the other land parcels namely no.985,2171,2177,2173,2172,2176,2178,2175,2183,2179,2181 ,2180 and 2182 kamwimbi a adjudication section were excised from 802 kamwimbi a adjudication section the property of the defendant father M'MURIUNGI M'THINGUNKU. These parcels of land were therefore unlawfully and illegally excised from land parcel 802 kamwimbi a adjudication section. The suit lands 2170 and 2174 therefore were illegally and fraudulently excised , created and given their numbers without an objection authorizing the same. This is why I am stating that the subdivisions were carried on paper only not even the demarcation officer ever visited 802 kamwimbi a adjudication section.

12. To my knowledge and information 802 Kamwimbi A Adjudication Section was walked the boundaries by MURIUNGI M'THINGUNKU. I came to know that there was a problem with MURIUNGI M'THINGUNKUS land Kamwimbi A Adjudication Section. When the defendant purchased the map sheet that covered 802 Kamwimbi A Adjudication Section. When the map was compared, the original map and the most recent one it was found that 802 Kamwimbi A Adjudication Section had been sub divided into 14 parcels. There was no objection to legalize the subdivisions . it was out of this illegal sub division that NGERENI M'MATHAYIA gave the plaintiffs the suit land. The father of the plaintiffs was not involved in any manner. That at committee level neither the plaintiffs nor their father SABASTIAN MATI BUNDI registered an objection against MURIUNGI M'THINGUNKU. That MURIUNGI M'THINGUNKU was therefore recorded with 802 Kamwimbi A Adjudication Section. At arbitration level no one filed an objection against MURIUNGI M'THINGUNKUS' parcel 802 Kamwimbi A Adjudication Section.

13. That during 60 days objection NGERENI M'MATHAYIA uncle to the plaintiffs and SABASTIAN M'BUNDI the father of the plaintiffs filed an objection against MURIUNGI M'THINGUNKU and against land parcel 802 Kamwimbi A Adjudication Section . these are objection no.39 and 25 against land parcel 802 kamwimbi a adjudication section. The two objections were dismissed . after their objections were dismissed the two appealed to the minister . the two appeals to the minister are still pending. This is the reason that am questioning how land parcel 802 Kamwimbi A Adjudication Section was sub divided before the hearing and determination of the appeal to the minister. The sub division scheme is clearly fraudulent.

14. After realizing that 802 Kamwimbi A Adjudication Section was interfered with , MURIUNGI M'THINGUNKU complained first to the local chief. the chief could not sought out the matter he then referred MURIUNGI M'THINGUNKU to DLASO CHUKA. I accompanied MURIUNGI M'THINGUNKU to chuka to complain to DLASO. I remember very well that the defendant was also present.

15. AT DLASO office, MURIUNGI M'THINGUNKU and those present ,presented an introduction letter from the local chief ,MURIUNGI M'THINGUNKU was referred to the director land adjudication officer Nairobi. DLASO gave us an introduction letter. I and the defendant ALBERT MUSYOKA , on behalf of MURIUNGI M'THINGUNKU went to Nairobi to see director national land adjudication and settlement officer. After reporting to the director land settlement officer , he gave us a letter to bring back to DLASO CHUKA. we brought the letter from Nairobi to land registrar CHUKA , we were advised to buy all the searches involving all the land parcels excised from 802 Kamwimbi A Adjudication Section, so that we could know who was actually given what from 802 Kamwimbi A Adjudication Section. we purchased the official searches. Land registrar advised the land registry with authority from the director of land adjudication settlement at Nairobi to put restriction on all the parcels on land illegally excised from 802 Kamwimbi A Adjudication Section and during the pendency of an appeal to the minister ‘‘ No dealing shall be registered until the appeal to the minister are finalized’ . No wonder therefore the two suit land Meru South Kamwimbi A 2170 and 2174 have a restriction against them by the land registrar under instruction of the director national land adjudication and settlement officer Nairobi.

16. After the 60 days objection were over MURIUNGI M'THINGUNKU applied for subdivision of his land kamwimbi a adjudication section. This was before the appeal to the minister were lodged by NGERENI M'MATHAYIA and SABASTIAN MATI BUNDI. Muriungi m'thingunku paid for subdivision of 802. MURIUNGI M'THINGUNKU paid after DLASO had agreed with his letter applying to do the sub division. Out of 802 kamwimbi a adjudication section land parcels 1831 ,1832 ,1833 ,1834,1835 ,2071, 2072 and 2073 were generated , muriungi m'thingunku sub divided 802 kamwimbi a adjudicating SECTION to give the resultant parcels to his sons. That 1832 was heremarked for ALBERT MUSYOKA. The parcels of land have never been registered due to the appeal to the minister by NGERENI M'MATHAIYA and SABASTIANI MATI BUNDI the father of the plaintiffs. We are still waiting for appeals to the minister to be heard.

17. The plaintiffs may be registered proprietors of land parcels Meru South Kamwimbi A 2174 and 2170 respectively ,however their registration is clearly fraudulent . the registration were obtained during the pendency of appeal to the minister which are still pending. Their suit is tainted with fraud and the same should be dismissed with cost to the defendant. The plaintiffs case in other words should be dismissed.

18. That is all I wish to states

Signed by **CHARLES KIMATHI MAKAMBA**.....

DATED AT CHUKA THIS.....13TH DAY OF AUGUST 2019

12. The parties filed written submissions.

13. The Plaintiffs' written submissions state as follows:

PLAINTIFF'S FINAL SUBMISSIONS

Your Lordship,

INTRODUCTION

The plaintiffs claim is that the defendant is in illegal occupation of the 1st plaintiff's piece of land LR. MERU SOUTH/KAMWIMBI"A" /2174 .That the defendant while on this illegal occupation has started to build a permanent house therein. In addition the illegal structure is blocking the access road to parcel No .MERU SOUTH/KAMWIMBI"A"/2170 thus creating a nuisance.

PLAINTIFF'S CASE IN BRIEF

The plaintiffs case briefly stated is tat 1st and 2nd plaintiffs are the registered owners of Meru South/Kamwimbi"A"/2170 in the name of Fredrick Gitonga Mati and Meru South /Kamwimbi "A" /2174 in the name of Peter Kaaria .That the 1st and 2nd plaintiffs are absolute proprietors within the meaning of Section 24 and Section 25 of Land Registration Act 2012. There is evidence on record that parcels LR. Meru South/Kamwimbi "A" 2170 ("2170") and Meru South /Kamwimbi /2174 ("2174") emanated from land parcel number Kamwimbi "A" 985("985") that had been procedurally been granted to one Ngereni Mathaiya and recorded in his name. There is ample evidence that Ngereni Mathaiya just like Muriungi M'Thigunku was allowed to sub-divide parcel 802 Kamwimbi "A" Ngereni Mathaiya too was allowed by the Dlasso to sub-divide his parcel 985 to his children, hence the registration of the 1st plaintiff with parcel 2174 ,and the registration of the 2nd plaintiff with parcel number, 2170. The 1st and the 2nd plaintiffs are brothers who got land after the completion of the adjudication process involving parcels 2170 and 2174. There is evidence your Lordship, that the defendant is the owner of land parcel KAMWIMBI 1832"A".

It is the plaintiffs' case that on 10/6/2019 the defendant (Albert Musyoka Muriungi) without permission from the 1st plaintiff encroached on the land parcel 2174 and started to build a stone house thereon and in the process has blocked the road of access (Public) road that connects parcel 2170 to 2174 hence occasioning a public nuisance which prevents 1st and 2nd plaintiffs from enjoying their rights to property on LR. 2170 and 2174 respectfully. It is these acts of trespasses this court is invited to stop and order that the defendant be evicted from parcel 2174 and the house he is building there be demolished on the orders of this court.

THE DEFENDANT'S CASE

The defendant in his statements of defence admits that the two parcels 2170 and 2174 are registered in the name of Fredrick Gitonga Mati, and Peter Kaaria respectively. The defendant too admits he is the owner of parcel number 1832"A" the same having emanated from land parcel 802 after the sub-division of the same.

The claim is about trespass on LR. 2174. The defendant's defence is largely irrelevant as the defendant seems to fall under the illusion that the plaintiffs are suing for the ownership. The ownership .was determined by the Land Adjudication Process when the land parcel Kamwimbi "A" 985 was granted to NGERENI MATHAIYA and then allowed to transfer to the beneficiaries who include the 1st and 2nd plaintiffs.

On the evidence, the land LR. MERU SOUTH/KAMWIMBI"A" /2174 belongs to the 1st plaintiff. This is the evidence adduced by PW1 (Fredrick Gitonga Mati) and this evidence has not been contradicted . There is a search certificate exhibit P1 and a copy of title exhibit P2. There is map exhibit P3 showing that 1832 "A" and 2174 are not neighbouring one another, and for the defendant to be in occupation of 2174 and start building there is the height of impunity and, I submit he be evicted forthwith, and the structure built thereon be condemned for demolition by this court.

There is no appeal against parcel No. 2174 and there is no evidence that there is an appeal on 2174 or 2170.

He (defendant) has admitted before this court he was a child when those cases were being fought by their parents as it can be seen from the Adjudication Record produced PW1(Fredrick Gitonga Mati) who was a party to those proceedings(see exhibit p 6) .

In passing, I am also submitting that where a title deed has been issued, an Appeal to the Minister is a waste of time for the same cannot nullify an already registered parcel for the proprietors rights have crystallized and are protected Under Section 24 and Section 25 of the Land Registration Act, 2012.

Section 24 (a) "the registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto".

And the rights of an absolute proprietor are thus enacted in section 25(1) of the Land Registration Act .

Section 25(1) “The rights of a proprietor, whether acquired on first registration or subsequently for valuable consideration or by an order of court, shall not be liable to be defeated except as provided in this Act, and shall be held by the proprietor, together with all privileges and appurtenances belonging thereto, free from all other interests and claims whatsoever,”.

It is also worth noting that the plaintiffs having been registered as absolute proprietors there is prima facie evidence that as the persons named in the respective title deeds they are indefeasible owners as provided by section 26 (1) of the Land Registration Act, 2012. There is no evidence at all that parcels 2170 and 2174 have any appeals to the minister. The appeal numbers or the record of such appeals to the minister should have been provided by the defendant.

In this regard, I am inviting your Lordship to hold, that an Appeal to the Minister once a title has been issued is void ab initio. Section 7 of the Land Act, 2012 provides how one can acquire land or title to land. That is through land Adjudication or through transfers.

Section . 7 of the Land Registration Act provides and I quote –

“Section 7 Title to land may be acquired through-

- (a) allocation,**
- (b) land adjudication process,**
- (c) compulsory acquisition,**
- (d) prescription,**
- (e) settlement programs,**
- (f) transmissions,**
- (g) transfers,**
- (h) long term leases exceeding twenty one years created out of private land: or**
- (i) any other manner prescribed in an Act of parliament. “**

The plaintiffs parcels of land were acquired through Land Adjudication Process and indeed registered as first registration owners and such ownership cannot be fettered or clogged by the director of settlement or surveys as the defendant seems to suggest.

The properties of the plaintiffs are protected Under Article 40 of the Constitution of Kenya and not subject to the chief Land Registrar. At any rate, the first plaintiff and the 2nd plaintiff are not alienating the land but seek to evict a trespasser in the name of the defendant (Albert Musyoka Muriungi).

CONCLUSION

The plaintiffs have proved on a balance of probability that they are the bonafide owners of parcels 2170 and 2174. The plaintiffs have also proven that the defendant has trespassed on parcel 2174 where he (defendant) is illegally putting up a stone house. The plaintiff prays to this court to put an end to this invasion which is more likely than it is not may lead to a breach of the peace as the defendant is taking the law in his own hands. If the defendant is waiting for the minister's decision for whatever it is worth, this court is invited to remove him from parcel 2174. The plaintiffs will confront the minister's decision if it ever materializes as that is bound to be void ab initio in that parcels 2170 and 2174 are already in place as registered properties of the plaintiffs.

The map on record produced by the plaintiffs as an exhibit p3 shows a road of access connecting parcel no. 2170 and 2174 which has been blocked by the nuisance created by the defendant.

I do pray most humbly, that Your Lordship grant the prayers sought in the plaint and order that the defendant be evicted from land parcel 2174 and that the illegal structure be demolished on the orders of this court.

I do pray for the costs of this suit.

DATED AT CHUKA THIS _____ 12th _____ DAY OF _____ October _____ 2020

P.M. MUTANI ADVOCATE

FOR THE PLAINTIFFS

14. The Defendant's written submissions state as follows:

DEFENDANT FINAL SUBMISSIONS

1. Your lordship by a plaint dated 20th June 2019, the plaintiff moved this honorable court for the following orders;

(a) An injunction to restrain the defendant by himself, his servant and /or agents or otherwise from remaining , building, or continuing to occupy of LR.MERU SOUTH/KAMWIMBI''A'' 2174.

(b) An order for the forcible demolition of the building structure on LR.MERU SOUTH/KAMWIMBI 'A' 2174.

(c) An eviction order to remove the defendant from the occupied portion of LR.MERU SOUTH/KAMWIMBI 'A'/2174 and evicting the defendant all together from the disputed land.

(d) An order directed to the OCS Chuka Police Station to provide security for the forcible removal of the defendant all together from disputed land

2. The plaintiff case is that the defendant is a trespasser on land parcel no.MERU SOUTH/KAMWIMBI 'A'/2174 and LR.MERU SOUTH KAMWIMBI A /2170. The plaintiffs in their evidence averred that FREDRICK GITONGA MATI the 2nd defendant is the registered proprietor of MERU SOUTH KAMWIMBI'A'/2174 while PETER KAARIA is the registered proprietor of MERU SOUTH KAMWIMBI 'A'2170. The plaintiff seek for orders of this court to have the defendant forcibly evicted from LR.MERU SOUTH/KAMWIMBI'A'2174 or any part thereof. The plaintiff equally pray for an injunction restraining the defendant by himself ,agent or servant from remaining or trespassing into LR.MERU SOUTH KAMWIMBI 'A'2174 .

3. On cross examination the plaintiffs could not explain several issues surrounding land parcels MERU SOUTH KAMWIMBI'A'2174 and MERU SOUTH KAMWIMBI 'A'2170. The plaintiffs could not explain how land parcel no.985 Kamwimbi a adjudication section as it was then , was sub divided into 14 resultants parcels namely MERU SOUTH KAMWIMBI 'A'2170 to 2183, when 985 KAMWIMBI A ADUDICATION SECTION had an appeal to the minister which todote has not been heard and determined. The plaintiff equally could not explain how DLASO could sub divide 985 kamwimbi a adjudication section as it was then without an objection being filed or lodged with DLASO. Another thing that the plaintiffs could not explain is why the chief land registrar put restrictions on the suit lands and 12 other parcels subdivisions of 985 KAMWIMBI A ADJUCATION SECTION as it was then. It was put to the plaintiffs by counsel for the defendant that the sub divisions scheme that give rise to the suit land was fraudulent and dishonesty and small wonder that the chief land registrar have placed a restriction over all land parcels resulting from 985 KAMWIMBI A ADJUDICATION section as it was then but the plaintiffs had no answer to the question.

4. Your lordship the defendant suit is short and brief, it is the defendant contention that he is not a trespasser on either MERU SOUTH KAMWIMBI A 2170 or 2174. The defendant contends that the suit lands have been super imposed on the defendants 1832 KAMWIMBI A ADJUDICATION SECTION a sub division of 802 Kamwimbi a adjudication section. That 802 Kamwimbi A adjudication section is the property of the defendant father MURIUNGI M'THINGUNKU who sub divided the same into various land including that of the defendant 1832 Kamwimbi A Adjudication Section. Before long NGERENI M'MATHAI the uncle of the plaintiff and SABASTIAN MATI the father of the plaintiff lodged an appeal against 802 Kamwimbi A Adjudication Section ,consequently the sub division of 802 Kamwimbi A Adjudication Section which include the defendant 1832 Kamwimbi A Adjudication Section could not be registered and hence no titles to date. The defendant prays that the plaintiff suit be dismissed with cost for want of merits.

5. Your lordship in our humble view we consider the following to be the main issues for determination,

(a) Initially was there a subdivision scheme that clearly indicated parcels no.802 ,803 and 985 Kamwimbi A Adjudication Section?

(b) Was the subdivision scheme that give rise to the suit land MERU SOUTH KAMWIMBI A /2170 and 2174 fraudulent ,unlawful and illegal?

(c) Should the defendant be allowed to reap from their fraudulent scheme in collusion with the DLASO and the demarcation officer by sub dividing 985 Kamwimbi A Adjudication Section when the said and an appeal to the minister which to date had not been determined?

(d) Should the plaintiff suit be dismissed with cost to the defendant?

6. Your lordship the defendant contend that the demarcation officer demarcated land parcels 985,802,803 and provided assess road. This demarcation took place before Kamwimbi A Adjudication Section was registered. See plaintiff's item no.3 in their list of documents dated 14th August 2019. The resultants parcels thereto could not however be registered on accounts of appeals to the minister. Todote 1985 ,802 and 803 have appeals to the minister against them and this appeals stopped registration.

Before 802 Kamwimbi A Adjudication Section was subjected to appeal to the minister by M'NGERENI M'MATHAI uncle to the plaintiffs and SABASTIAN MATI the father of the plaintiffs, MURIUNGI M'THINGUKU the defendant father had subdivided 802 Kamwimbi A Adjudication Section from which he heremarked 1832 Kamwimbi A Adjudication Section for the defendant. this parcel of land to date is not registered because NGERENI M'MATHAI and SABASTIAN MATI uncle and father of plaintiffs respectively lodged appeal to the minister which is pending.

7. The sub division scheme carried out by DLASO and the demarcation officer which gave rise to the current parcels namely LR.MERU SOUTH KAMWIMBI A 2170 ,2174 and 12 others were fraudulent . the subdivision schemes were a collusion and connivance between DLASO demarcation officer and the plaintiff or their proxies NGERENI M'MATHAI and SABASTIAN MATI their father. The defendant, his siblings and his father MURIUNGI M'THINGUKU were not engaged nor involved in the demarcation excise that gave rise to 2170 , 2174 and 12 others parcels, despite that they were affected the defendant adversely. It is for this reason that we are submitting that the demarcation actions were fraudulent.

Parcels no Meru South 2170 , 2174 and 12 others were subdivisions of the then 985 kamwimbi a adjudication section. To date there is appealing appeal to the minister regarding 895 KAMWIMBI A ADJUDICATION SECTION. It is common knowledge that once there is appeal to the minister, until the appeal is heard no dealing take place in respect of such land fragment. How the DLASO , demarcation officer and the plaintiffs through their proxies M'MATHAI NGERENI and SABASTIAN MATI sub divided 985 KAMWIMBI A ADJUDICATION SECTION into 14 parcels which include parcel no.2170 and 2174 remain illegal and unlawful. The excise was null and void for all intent and purpose.

In an adjudication section, demarcation and changes to the adjudication record is always done through an objection. There was no objection by the plaintiffs which permitted or authorized M'MATHAI NGERENI to subdivide 802 Kamwimbi A Adjudication Section.

To compound that sub division of 985 KAMWIMBI A ADJUDICATION SECTION (on account of appeal to the minister) was incompetent and fraudulent , the chief land registrar caused a restriction to be put on all 14 parcels resulting from subdivision of 985 kamwimbi a adjudication section. The restrictions are still subsisting LR.Meru South Kamwimbi A 2170 and 2174 are creatures of a fraudulent and dishonesty scheme. The plaintiff has no moral or legal pedestal upon which to justify the registration of the plaintiff with LR.Meru south Kamwimbi a 2170 for 1st plaintiff and Meru South Kamwimbi A 2170 for the 2nd defendant or their claim advanced in this suit.

8. My lord the plaintiffs should not be allowed by this court to benefit from otherwise unlawful and illegal action in which the plaintiffs wholly participated. A person cannot be allowed to benefit from an illegality which he is part of. He who comes to equity must come with clean hands. The plaintiffs hands are completely soiled.

9. Your lordship we call upon the court to interrogate the plaintiffs case (plaint, statements and oral evidence), the defendant case , the defence his statement and his oral evidence, and make a finding and hold that the plaintiffs case is tainted with fraud and dishonesty. The prayers presented by the plaintiffs are meant to sanitize , otherwise an illegal and unlawful actions by the plaintiffs through their proxy M'NGERENI M'MATHAIYA. The plaintiffs having come in court without clean hands. The suit should be dismissed with cost to the defendant , the defendant will also be claiming for interest on the suit at court rate from the date of judgment.

10. We rest our submission and pray.

DATED AT CHUKA THISDAY OF2020

DRAWN AND FILED BY

M/S I.C MUGO & CO

ADVOCATES I.C MUGO & CO ADVOCATES FOR THE DEFENDANT

P.O BOX 380

CHUKA-0733921078-irericharles4gmail.com

DETERMINATION

15. The issues for determination in this matter are:

- a) Has the defendant trespassed upon Land Parcel No. Meru South/Kamwimbi "A"/2174 and if so are the orders sought by the Plaintiff merited?
- b) Who will bear costs of the suit?

16. I have considered the pleadings, the oral evidence and the submissions proffered by the parties to buttress their diametrically incongruent assertions. I do opine that a court of law in coming to its determination relies on the evidence proffered by the parties. Submissions, although helpful, cannot introduce new evidence and where this is done such evidence is not considered by the courts when they make their determinations.

17. The defendant has not denied that Land Parcel No. Meru South/Kamwimbi "A"/2174 is NOT registered in his name. interestingly the defendant says that he lives on parcel No. 1832. He also admits that Parcel Numbers 1832 and 2174 are far apart.

18. In his evidence the defendant says that his land should be where parcel No. 2174 is. But Parcel Number 2174 exists and is registered in

the name of Peter Kaaria, the 1st Plaintiff. He, however, says that Land Parcel Numbers Meru South/Kamwimbi “A”/2170 and 2174 were obtained fraudulently and for that reason this suit should be dismissed.

19. From a totality of the circumstances of this case, it is veritably pellucid that this suit is about trespass upon the Plaintiff’s land and not on boundaries. Otherwise, had I found that this suit was about a boundary dispute, I would have directed the parties to seek the intervention of the District Land Registrar as is decreed by the law.

20. It is quite clear that the defendant in his evidence has not disproved the Plaintiff’s claim that he has trespassed upon Parcel No. Meru South/Kamwimbi “A”/2174 and even encroached upon a road of access. His justification is that parcel No. Meru South/Kamwimbi/2174 stands on land where his own land should be.

21. If land Parcel Numbers Meru South/Kamwimbi “A”/2170 and 2174 were obtained fraudulently, then it would have been incumbent upon the defendant to claim them and seek cancellation of those titles through a legitimate legal process. This he has not done.

22. I do note that the defendant did not, through a counter claim, canvass the illegality of the subject lands. One cannot just autonomously declare land to be his. Due process must be followed. In this matter, even assuming that there is a pending appeal to the Minister, the defendant should have waited for the appeal to be determined. Instead, the defendant contrived his own self help process and moved into the said land and started putting up a building thereon. This is behavior that this court veritably deprecates. It cannot be encouraged and embraced by courts of law. Such conduct would invariably spawn confusion in the administration of justice and in the way a civilized society should be ordered. The defendant could also have used due process to canvass the alleged fraudulent activities of the plaintiffs and sought cancellation of the apposite titles.

23. Land Parcel No. Meru South/Kamwimbi “A”/2174 is registered in the name of Peter Kaaria, the 1st Plaintiff. Land Parcel No. Meru South/Kamwimbi “A”/2170 is registered in the name of Fredrick Gitonga Mati, the 2nd Plaintiff.

24. I find that the defendant has trespassed upon Land Parcel No. Meru South/Kamwimbi “A”/2174 without legally justifiable cause.

25. In the circumstances, I hereby enter judgment for the Plaintiffs against the defendant in the following terms;

a) An injunction is hereby issued restraining the defendant by himself, his servants and/or agents or otherwise from remaining, building or continuing to occupy Land Parcel No. MERU SOUTH/KAMWIMBI “A” 2174.

b) An order is hereby issued for the forcible demolition of the building structure on Land Parcel No. MERU SOUTH/KAMWIMBI “A” 2174.

c) An eviction order is hereby issued to remove the defendant from any portion or portions he has occupied on Land Parcel No. MERU SOUTH/KAMWIMBI “A” 2174.

d) An order is hereby issued and is directed to the OCS Chuka Police Station to provide security for the forcible removal of the defendant all together from Land Parcel No. MERU SOUTH/KAMWIMBI “A” 2174.

e) Costs shall follow the event and are awarded to the Plaintiffs.

Delivered in open Court at Chuka this 7th day of December, 2020 in the presence of;

CA: Ndegwa

Peter Kaaria – 1st Plaintiff

Fredrick Gitonga Mati – 2nd Plaintiff

I.C. Mugo for the defendant.

P. M. NJOROGI,

JUDGE.