



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT CHUKA

CHUKA ELC CASE NO. 258 OF 2017

FORMERLY MERU ELC. CASE NO. 116 OF 2017

ALVIN MBAE.....1ST PLAINTIFF

ALICE MBIRO (THRO' ALVIN MBAE AS NEXT FRIEND).....2ND PLAINTIFF

WILSON MBAABU.....3RD PLAINTIFF

VERSUS

KINYUA MUKATHA.....1ST DEFENDANT

MONICA K. MUGO.....2ND DEFENDANT

ANDERSON NKONGE MUGO.....3RD DEFENDANT

RULING

1. This application states that it has been brought to court under Section 3,3A,63(e) Civil Procedure Act, Article 40 of the Constitution and any other enabling provisions of the law.
2. The application seeks the following orders:
 1. That this application be certified urgent and service of the same be dispensed with and or same be heard explants (sic) in the first instance, and or issue direction for hearing on 13th day of October, 2020 when other defendant application dated 23rd July, 2020 will be heard.
 2. That this Honourable court be pleased to grant leave to the firm of Kiogora Mugambi Co & Advocates to come on record for the 1st defendant in place of the firm of IC Mugo Co & Advocates for the defendants.
 3. That the honorable court be please allow one EDWIN NYAGA MUKATHA to proceed with matter as the legal representative of KINYUA MUKATHA the 1st defendant herein who died on 21st October, 2006 for the purpose of execution of court judgment herein and other related proceedings.
 4. That the Honourable court be pleased to vacate the inhibition orders place (sic) on Mwimbi/Murugi/1715 of vide a court orders in HCC NO 3 of 2001 and equally be pleased to vacate all cautions registered on parcel No Mwimbi/Murugi/1715 respectively.
 5. That the Honourable court be pleased to make an order compelling the plaintiffs to give vacant possession to the defendants in parcel referred as Mwimbi/Murugi/1715 the property of the 1st defendants.
 6. That Honourable court be pleased to make an order of eviction of the plaintiffs from occupation possession and or any dealing whether physical possession or otherwise from parcel No. Mwimbi/Murugi/1715.
 7. That the Honourable court be pleased to direct the officer commander chogoria police station to provide security during eviction of the plaintiff from suit land Mwimbi/Murugi/1715 respectively and further make an order directing BEELINE Auctioneers to execute the orders of the court.

8. Cost of the suit be provided for.

3. The application has the following grounds:

1. That the 1st defendant KINYUA MUKATHA is the owner parcel No. Mwimbi/Murugi/1715.
2. That litigation must come to end.
3. That there have been several suit (sic) filed by the plaintiff where the court has pronounced itself and dismissed suits thereof against the plaintiffs.
4. That a degree (sic) of this court is never issued in vain HENCE the plaintiffs must belong to the rule of law.
5. That the defendants are desirous and entitled to enjoyment of judgment of this court.
6. That the plaintiff (sic) have been in occupation of the suit property parcel No. Mwimbi/Murugi/1715 in the illegally against equity.
7. That the honorable court be please (sic) allow one EDWIN NYAGA MUKATHA to proceed with matter as the legal representative of KINYUA MUKATHA the 1st defendant herein who died on 21st October, 2006 for the purpose of execution of court judgement herein.
8. That the continued infringement to the defendants right by the plaintiffs is against fundamental principles of law.
9. That this court in its wisdom dealt extensively on the issue of all related filed cases in respect of the parties herein and properties thereon and as such HCC No. 3 of 2001 Meru is among them and thus this court has powers to issue orders as prayed in tandem with its judgment.
10. That the court having pronounced itself and there being no appeal lodged and or any appeal arguable with chances of success then this court is possessed of the power to free and protect the said parcel No. Mwimbi/Murugi/1715 from any caution, inhibition and illegal possession and user and thereby be pleased proceed to make the orders as prayed and or sought.
11. The plaintiffs actions are illegal and inimical to good order in the society and/or conduct of relationship unless evicted the applicants shall be highly prejudiced and shall suffer irreparable loss and damages not compensable by any award of damages.

4. I note that the application is intended to implement this court's judgment delivered on 21st march, 2018. Earlier on in Meru Civil Appeal No. 106 of 1979 and in Meru High Court Civil Suit No. 204 of 2001, the issues concerning the subject land had been conclusively determined. In its decision delivered on 21st March, 2018, this court noted as follows:

“18. A studious bystander watching the court doing so would surmise that he is beholding veritable judicial phantasmagoria. A decision made by a Judge seized of concurrent and/or horizontal jurisdiction with another Judge having his decision juxtaposed against that of another Judge of similar status! He would think that the judiciary is a house of babel. I think that this would spawn judicial anarchy and chaos. I opine that the plaintiffs have been involved in a forum shopping misadventure.”

5. I still stand by this opinion.

6. Litigation must at some time come to a close. Judgments of courts of law unless appealed against must be enforced. There is no indication that this court's judgment delivered on 21st day of March, 2018 was appealed against.

7. Having considered all apposite facts and circumstances, the following orders are issued:

- a) Prayers 1 and 2 are spent.
- b) Prayers 3,4,5,6 and 7 are granted.
- c) Costs are awarded to the applicants who are the 2nd and 3rd defendants.

Delivered in open Court at Chuka this **2nd day of December, 2020** in the presence of:

CA: Ndegwa

Mutegi h/b Kiogora Mugambi for 1st, 2nd and 3rd applicants.

Plaintiffs advocate absent.

P. M. NJORGE,

JUDGE.