



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT CHUKA

CHUKA ELC MISCELLANEOUS APPLICATION CASE NO. 14 OF 2017

FORMERLY EMBU ELC. 44 OF 2014

ELIAS MICHENI MUGO.....PLAINTIFF

VERSUS

LAND ADJUDICATION OFFICER MERU SOUTH DISTRICT -RESPONDENT

FREDRICK MATI.....1ST INTERESTED PARTY

FREDRUCJ BHERY HITGAN.....2ND INTERESTED PARTY

Ruling

1. This application was brought to court through a certificate of urgency dated 10th January, 2019 and which was filed on 14th January, 2019.
2. The application states that it has been brought to court under Sections 3A and 63 e of the Civil Procedure Act and under Orders 40 Rule 1 and 2 and Order 51 Rule 1 of the Civil Procedure Rules.
3. The application seeks the following orders:
 1. Service of this application be dispensed with in the first instance as the object of this application and of the suit will be defeated if the respondent operates and thereafter alienates, or in any manner whatsoever deals with the suit land parcel Numbers Karingani/Mariani/6666-6667 same measuring approximately 0.92 HA.
 2. An order of temporary injunction to restrain the respondent, his servants and/or agents or otherwise howsoever from selling, alienating, cultivating, developing structures thereon, trespassing or in any other way interfering with the applicant's interests in the suit land, occupation or possession of the property parcel numbers Karingani/Mariani/6666-6667 same measuring approximately 0.92 HA pending the hearing and determination of this application.
 3. An order of temporary injunction to restrain the respondent, his servants and / or agents or otherwise howsoever from selling, alienating, cultivating, developing, destroying structures thereon, trespassing or in any other way interfering with the applicant's interest in the suit land, occupation or possession of the property parcel numbers KARINGANI/MARIANI/6666-6667 same measuring approximately 0.92 HA pending the hearing and determination of this application.
 4. Any other relief that this honourable court may deem fit to grant.
 5. The costs of this application.
4. The application has the following grounds:
 - i. That the applicant is the sole registered owner of the subject parcel of land which he has been in occupation of since time immemorial.
 - ii. That the respondent had filed an application seeking the court to grant him the leave to quash the decision made by the Land Adjudication Officer Meru South District where the honourable court dismissed the said application.
 - iii. That the applicant should not be rendered homeless at the expense of the selfish interest of the respondent.

5. The application is supported by the applicant's affidavit sworn on **10th January, 2019** which states:

I, GILBERT GOTHAM a resident of CHUKA of P. O. Box 263, 60400 CHUKA do hereby make oath and state as follows:

1. That I am the applicant herein well versed with the matters surrounding this case hence duly clothed with the sufficient knowledge and facts to swear this affidavit.
2. That this land is neither encumbered nor does anyone have a claim against the same save for the respondent's selfish interests.
3. That my uncle was in active occupation and a gainful user of the said land until when he met his demise and the respondent was left to hold in trust of the said land, later when I attain the age of majority the respondent herein popped up with some interest on the said land parcel subject to this matter.
4. That from then on, I started witnessing some suspicious actions from the respondent herein and I tried to inquire what was going on, she (sic) turned a deaf ear to me.
5. That I am indeed very dysphonic towards the unwarranted interference and disturbance from the respondent against myself due to this land parcel which depend (sic) on the same parcel of land for our entire lively hood.
6. That I also went ahead to seek negotiations where I involved the family and clan members and they bore no fruits.
7. That unless this honourable court grants a temporary injunction I stand to suffer irreparable loss and damage.
8. That I swear this affidavit in support of the application for temporary injunctive orders against the respondent herein.
9. That what is deponed to herein is true to the best of my knowledge, understanding and belief save matters deponed to on information sources whereof have been disclosed.

6. At the exparte stage, the applicant asked the court to grant prayer 2 in the application and after the application is heard interpartes, to grant prayer 3 thereof.

7. I note that the Judicial Review application seeking an order of certiorari to remove into this court for purpose of being quashed the decision of the adjudication officer in objection No. 640 MARIANI ADJUDICATION SECTION made and delivered on 18th May, 2006 WAS filed through an amended Notice of Motion on 6th March, 2008. On 27th June, 2018, nearly 12 years after the original application was filed on 4th July, 2006, this court delivered it's judgment. It is noted that the present application has been filed over six months after this court's judgment was delivered. The applicant was represented in court by advocate George Kamau who was holding brief for advocate Morris Njagi, his advocate. There is no indication, whatsoever, that the applicant has appealed against that judgment. Having been represented in court by an advocate on the date when the apposite judgment was delivered, the applicant has not offered any good explanation concerning why he did not lodge an appeal against this court's judgment.

8. Judicial Review proceedings are principally concerned with ascertainment of the integrity of the decision making process that culminated in the decision an applicant challenges. The proceedings are fully determined once a judgment allows the apposite application or dismisses it. Once this is done, the court becomes functus officio. Additional remedies cannot be sought by dissatisfied litigants by coming back to court. They should appeal against impugned judgments. This is the rational for the unequivocal statement by section 8(5) of the Law Reform Act that: ***"Any person aggrieved by an order made in the exercise of the Civil jurisdiction of the High Court under this section may appeal therefrom to the Court of Appeal."***

9. Section 63(e) of the Civil Procedure Act is not applicable in the circumstances of this matter because the case has already been concluded, and therefore, no interlocutory orders are tenable. Section 3A of the Civil Procedure Act is not applicable because this court, after delivering its judgment, cannot properly exercise its inherent power to make orders as it may be necessary for the ends of justice or to prevent abuse of the process of the court. The court has no ends of justice to promote. Justice has already been delivered in the court's view through the apposite judgment. There is also no abuse of the court's process which the court requires to arrest.

10. Order 40 Rules 1 and 2 are not applicable because this matter has been concluded whereas orders grantable under this order are presumed to be interlocutory orders. Order 50 Rule 1 of the Civil Procedure Rules requires that all applications be brought to court by way of motion and be heard in open court. These requirements have been followed.

11. I do find that the orders sought in this application are not merited. I also hasten to add that litigants should not conflate Judicial Review Proceedings with other Civil Proceedings brought to court, say, by way of plaints.

12. In the circumstances, I summarily dismiss this application.

13. I issue no order as to costs.

14. It is so ordered.

Delivered in open Court at Chuka this 15th day of January, 2019 in the presence of:

CA:Ndegwa

Gilbert Njeru Gotham - Applicant

P. M. NJORGE

JUDGE