



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT CHUKA

CHUKA ELC CASE NO. 02 OF 2019

NJIRU MICHENI NTHIGA

(suing as a legal representative and

administrator of the estate of the deceased

Leonard R. I. Nthiga).....PLAINTIFF/PLAINTIFF

VERSUS

THE GOVERNOR OF THARAKA NITHI

COUNTY GOVERNMENT.....1ST RESPONDENT/DEFENDANT

COUNTY GOVERNMENT OF THARAKA NITHI.....2ND RESPONDENT/DEFENDANT

THE MEMBER OF COUNTY ASSEMBLY

MAGUMONI WARD.....3RD RESPONDENT/DEFENDANT

THE CHIEF OFFICER ROADS AND

INFRASTRUCTURE THARAKA NITHI COUNTY...4TH RESPONDENT/DEFENDANT

THE CHIEF OFFICER LANDS, PHYSICAL

PLANNING AND URBAN DEVELOPMENT

THARAKA NITHI COUNTY.....5TH RESPONDENT/DEFENDANT

WESTOMAXX INVESTMENT LTD.....6TH RESPONDENT/DEFENDANT

RULING

1. There are two applications in this matter. One is dated **27th February, 2019**. The other application was made orally on **25th March, 2019**. It sought to amend the suit by inserting the name of the 3rd defendant, the MCA, Magumoni ward. This oral application was not opposed.

2. The application dated **27th February, 2019** seeks the following orders.

1. That due to the nature and the urgency of the instant application, this honourable court be pleased to hear the instant application ex-parte, save for inter-parte hearing.

2. That pending the hearing of the instant application inter-partes, this honourable court be pleased to issue restraining orders, restraining the respondents/defendants (1-6), from further trespass, demolition, making of any markings to the intended road construction on the suit premises, leveling of the illegally acquired portion to pave way for road widening construction on the suit premises and/or in any manner doing any act that may prejudice the status quo prevailing on the demolished part of LR. Magumoni/Thuita/779. (hereinafter referred to as the suit subject matter).

3. That this honourable court be pleased to do a scene visit on LR. Magumoni/Thuita/779 and ascertain the extent of the trespass and damage occasioned by the respondents/defendants (1-6), pending the hearing and final determination of the instant application and the main suit.

4. That pending the hearing and final determination of the instant application, this honourable court be pleased to issue restraining and/or permanent orders of injunction restraining the respondents/defendants (1-6), their agents, assigns and/or anybody acting on their behalf from further trespassing, further carrying on demolitions, making of any markings on the suit premises to pave way for the intended road expansion construction, leveling of the illegally acquired portion to pave way for road widening construction on the suit premises, and/or any manner doing any act that prejudices the status quo prevailing on the suit premises and particularly the demolished part of the rental premises on LR. Magumoni/Thuita/779.

5. That pending the hearing and final determination of the instant suit, this honourable court be pleased to issue restraining and/or permanent orders of injunction restraining the respondents/defendants (1-6), their agents, assigns and/or anybody acting on their behalf from further trespassing, further carrying on demolitions, making of any markings on the suit premises to pave way for the intended road expansion construction, leveling of the illegally acquired portion to pave way for road widening construction on the suit premises, and/or any manner doing any act that prejudices the status quo prevailing on the suit premises and particularly the demolished part of the rental premises on LR. Magumoni/Thuita/779.

6. That this honourable court do grant such further orders as would be appropriate in the circumstances for the ends of justice.

7. That the cost of this application be provided for.

3. The application is supported by the affidavit of Njiru Micheni, the applicant, which states:

1. That I am the applicant/plaintiff herein, hence competent to make and swear this affidavit.

2. That I am the administrator in respect of my deceased father's estate LR. Magumoni/Thuita/779. (Annexed find a copy of the order granting limited grant ad marked "NMN 1").

3. That on 9th February, 2019, the 1st, 2nd, 3rd, 4th, 5th and 6th respondents/defendants jointly and severally trespassed and unlawfully demolished part of my deceased father's rental premises on LR. Magumoni/Thuita/779. (Annexed find photographs of the bulldozer of Tharaka Nithi County Government demolishing and or flattening my deceased father's rental premises and the debris left thereof after the said demolition and marked "NMN 2").

4. That the deceased has suffered great loss and/or damage after the respondents'/defendants' (1-6) heinous acts and which I hold the respondents/defendants (1-6) jointly and/or severally liable, and are duty bound to compensate reasonably the applicant/plaintiff and on behalf of the estate of deceased.

5. That my compensatory suit against the respondents/defendants is highly meritorious and it is in interest of justice that an injunction be issued restraining the respondents/defendants from further demolition, and/or doing any act to pave way for the intended construction of the road leading to Kibugua Baptist Church.

6. That the respondents/defendants are determined to cause untold loss and damage to the estate of the deceased and I pray for court's intervention and protection.

7. That unless the orders sought are granted the respondents/defendants (1-6) may proceed with their determined endeavors and erase the evidence on the suit land and frustrate my compensatory suit filed herein.

8. That my advocates on record have duly advised me and which advice I verily believe the same to be sound, that this is a proper case to warrant issuance of the orders sought in my application as the threshold laid down on celebrated case of Giella versus Cassman Brown & Co. LTD 1973 (EA) 358, on granting of injunction orders have been satisfied.

9. That no prejudice may be occasioned to the respondents/defendants if the orders sought are granted, as purported compulsory acquisition on part of my deceased father LR. Magumoni/Thuita/779 was not effected as per the law.

10. That the contents of my affidavit are true to the best of my knowledge, belief and information.

4. When the application dated **27th February, 2019**, came up for interpartes hearing on **25th March, 2019**, the parties were in agreement that the preliminary objection by the 1st, 2nd, 4th, 5th and 6th defendants dated **25th March, 2019** be heard first.

5. The court issues the following orders:

1. The Plaintiff/Applicant is granted 7 days to respond to the Preliminary Objection.

2. The oral application by the Plaintiff/Applicant to have the name of the MCA for Magumoni Ward, 3rd defendant, inserted in the suit is allowed.

3. The Plaintiff/Applicant to serve upon the 3rd defendant the orders issued by the court today.

4. All parties, including the 3rd defendant, to come to court for directions on **8th April, 2019**.

Delivered in open Court at Chuka this 25th day of March, 2019 in the presence of:

CA: Ndegwa

Munyori for 1st, 2nd, 4th, 5th and 6th defendants

Kirimi for the plaintiff

P.M. NJORGE

JUDGE