



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT CHUKA

CHUKA ELC CASE NO. 15 OF 2018

DIONECIA CIANDEKE.....PLAINTIFF

VERSUS

NDURURU NYAGA.....DEFENDANT

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1. This application is dated **13th December, 2018** and seeks orders:

1. That this application be certified as urgent and its service be dispensed with in the first instance.

2. That the honourable court be pleased to grant temporary orders of injunction restraining the defendant/respondent his agents, employees and or servants from selling, transferring or however disposing off that parcel of land known as Karingani/Ndagani/294 or its subsequent sub divisions known as Karingani/Ndagani/4204, 4205, 4206, 4207, 4208, 9554, 9555, 9556, 9557, 9558, 9559, 9560, 9561, 9562, 9563, 9564 and 9565, AND Karingani/Ndagani/1046 and any subsequent subdivisions (hereinafter referred to as the "property" pending the hearing and determination of this application).

3. That the defendant/respondent his agents, employees and or servants be restrained by a permanent injunction from selling, transferring or however disposing off that parcel of land known as Karingani/Ndagani/294 or its subsequent sub divisions know as Karinani/Ndagani/4204, 4205, 4206, 4207, 4208, 9554, 9555, 9556, 9557, 9558, 9559, 9560, 9561, 9562, 9563, 9564 & 9565 AND Karingani/Ndagani/1046 (hereinafter referred to as the "property") pending the hearing and determination of the main suit.

4. That costs of this application be provided for.

2. It has the following grounds:-

a) That the suti properties being parcel of lands known as Karingani/Ndagani/294 or its subsequent sub divisions known as Karingani/Ndagani/4204, 4205, 4206, 4207, 4208, 9554, 9555, 9556, 9557, 9558, 9559, 9560, 9561, 9562, 9564 & 9565 AND Karingani/Ndagani/1046 is at risk of being sold by defendant/respondent to the detriment of the plaintiff/applicant as they are trust lands.

b) That sometimes in 1994 the defendant/respondent, fraudulently, illegally, un-procedurally, through a corrupt scheme, cause Karingani/Ndagani/294 to be registered in his names.

c) That the properties forms part and parcel of Trust properties and there is a real danger of the property being sold by the defendant/respondent, fraudulently, illegally, un-procedurally, through a corrupt scheme, caused Karingani/Ndagani/294 to be registered in his names.

d) That the plaintiff/applicant has an arguable case with a high probability of success.

3. The application is supported by the affidavit of Dionicia Ciandeke, the plaintiff, which states:-

I, Dionecia Ciandeke a resident of Chuka and of Post Office Box 15-60400 Chuka in the Republic of Kenya do hereby make oath and states as follows:

1. That I am an adult female of sound mind and the plaintiff/applicant herein thus competent to swear this affidavit.

2. That I am the daughter of one Nkoroi M'Makanya born of his 2nd wife one Joyce Ciamwonge, Nyaga Nkoroi alias Njeru

Nyaga Itugura the step-father to the defendant is my elder half brother born of my father's 1st wife one Ciankuga Nyaga.

3. That my father married my mother after the death of his wife, and it is here who gathered and walked the boundaries of the suit-lands in their original form to wit L.R. Karingani/Ndagani/294 & 1046. My mother was aided by father's clan Ibiga Na Thona, since women did not own identity cards, my mother caused the said land to be registered in the names and aliases of my half brother who resided in Embu with his two wives in the year 1976.

4. That the suit land Karingani/Ndagani/294 was my father's matrimonial home, it is where my parents are buried, it is the place I was born and grew up calling home and my nieces and nephews claiming through me live on the aforesaid parcel of land.

5. That the defendant who never set foot in our land and being the step son to my brother, fraudulently caused his name to be registered as owner of L.R. Karingani/Ndagani/294 in the year 1994, claiming that the initial name of registration Njeru Nyaga was his common name which claim was fraudulent, unbelievable and intended to hoodwink as the name was his step father's moniker given to my half brother by my mother who bore no sons and who caused the said entry into the register (A copy of the green card is hereto attached and marked 'DC1')

6. That to further prove that the defendant is a fraudster in originating summons No. 127 of 1996 at The High Court in Meru, the defendant swore an affidavit clearly indicating that Njeru Nyaga was a stranger to him and correctly referred to himself as Nduru Nyaga. (A copy of the green card is hereto attached and marked 'D C2').

7. That I will be disinherited and with no place to reside on by other dependants of the suit land if the orders ought herein are not granted as the defendant is hell bent on selling off the parcel herein.

8. That no prejudice will be occasioned to the defendants/respondents if the orders sought herein are granted.

9. That I have an arguable case with a high probability of success.

10. That I stand to suffer irreparable loss and damage if the suit lands are not inhibited and the suit will be rendered merely academic and overtaken by events should the defendants/respondents not be restrained from offering for sale or howsoever disposing off or transferring the said property to a third party.

11. That the intention of the registration by my mother was for customary trust with intergenerational equity in mind.

12. That what is deponed herein is true to the best of my knowledge, information and belief.

4. When the application came up for interpartes hearing on **2nd April, 2018** Mr. Kathungu informed the court that the order for temporary injunction granted by the court on 17th December, 2018 had been changed to show that final orders had been granted by the court. The order granted by the court on 17th December, 2018 reads as follows:

b) "Prayer 2 is granted in terms of section 63(e) of the Civil Procedure Act pending hearing of this application and an order of inhibition issued against all the parcels of land mentioned in prayer 2."

5. The order taken to the Land Registrar for implementation reads as follows:

IN COURT ON 17TH DECEMBER, 2018 BEFORE HON. JUSTICE P. M. NJOROGE

ORDER

APPLICATION FOR:

1. That this application be certified as urgent and its service be dispensed with in the first instance.

2. That the honourable court be pleased to order revoking, cancelling and or deleting the names of the defendant from the register of the land registry Meru South as registered proprietor/owner of L.R. Karingani/Ndagani/294 and its subsequent subdivisions and substitute the same with the names Dionecia Ciandeke pending the hearing and determination of the main suit.

3. That the honourable court be pleased to grant temporary orders of injunction restraining the defendant/respondent his agents, employees and or servants from selling, transferring or however disposing off that parcel of land known as Karingani/Ndagani/294 or its subsequent sub divisions known as Karingani/Ndagani/4204, 4205, 4206, 4207, 4208, 9554, 9555, 9556, 9557, 9558, 9559, 9560, 9561, 9562, 9563, 9564 & 9565, AND Karingani/Ndagani/1046 and any subsequent subdivisions (hereinafter referred to as the "property" pending the hearing and determination of this application).

4. That the defendant/respondent, his agents, employees and or servants be restrained by a permanent injunction from selling transferring or however disposing off that parcel of land known as Karingani/Ndagani/294 or its subsequent sub divisions known as Karingani/Ndagani/4204, 4205, 4206, 4207, 4208, 9554, 9555, 9556, 9557, 9558, 9559, 9560, 9561, 9562, 9563, 9564 & 9565 AND Karingangi/Ndagani/1046 (hereinafter referred to as the "property") pending the hearing and determination of the main suit.

5. That costs of this application be provided for.

Upon reading the application presented to this court on 17th December, 2018 and upon reading the supporting affidavit of Dionecia Ciandeke sworn on 13th December, 2018 and UPON hearing the counsel for the applicant.

IT IS HEREBY ORDERED:

1. That the honourable court does not certify this matter as urgent but the same to heard on a priority basis.

2. That the honourable court hereby issues in terms of section 63(e) of the Civil Procedure Act, an order revoking, cancelling an or deleting the names of the defendant from the register of the land registry Meru South as registered proprietor/owner of L.R. Karingani/Ndagani/294 and its subsequent subdivisions and substitute the same with the names Dionecia Ciandeke pending the hearing and determination of the main suit.

3. That the application to be properly served upon the defendant.

4. That the application to be heard on the 2nd April, 2019.

Given under my hand and the seal of this honourable court in open court this 17th day of December, 2018

P. M. NJOROGE

E.L.C. JUDGE

ISSUED at Chuka this 18th day of December, 2018

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DEPUTY REGISTRAR

HIGH COURT OF KENYA – CHUKA.

6. It is clear that this order is forged. In view of this discovery, I find that this application merits dismissal.

7. The following orders are issued:

a) Registry to ensure that this file is kept under lock and key.

b) The application dated 13th December, 2018 is hereby dismissed with costs being in the cause.

c) The plaintiff is ordered to fully comply with order 11, CPR, within 14 days of today and the defendant is ordered to also fully comply with order 11, CPR, within 14 days after receipt of the plaintiff's compliance documents and NEVERTHELESS within 14 days after expiry of the period granted to the plaintiff.

d) The County Director of Criminal Investigations is required to investigate the circumstances leading to the Land Registrar, Chuka receiving a forged court order **AND** to file a report within 30 days **AND** the defendant's advocate is directed to serve this order upon the County Director of Criminal Investigations, Tharaka Nithi County, promptly.

e) By consent of the advocates representing the parties, this suit will be heard on **11th June, 2019.**

Delivered in open Court at Chuka this 2nd day of April, 2019 in the presence of:

CA: Ndegwa

C.I. Mugo for the plaintiff

Kathungu for the defendant

P.M. NJOROGE

JUDGE