



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT CHUKA

CHUKA ELC PETITION CASE NO. 03 OF 2018

IN THE MATTER OF CHAPTER 4V THE BILL OF RIGHTS OF THE CONSTITUTION OF KENYA 2010

IN THE MATTER OF ALLEGED CONTRAVENTIONS OF FUNDAMENTAL RIGHTS AND FREEDOMS UNDER ARTICLE 20, 21, 22, 23, 40 AND 47 OF THE CONSTITUTION OF KENYA 2010

BETWEEN

OBADIAH MURUJA MUGENDIPETITIONER

VERSUS

CHARLES KABITI JAPHET1ST RESPONDENT

MERU SOUTH/MAARA LANDS ADJUDICATION OFFICER....2ND RESPONDENT

THE DISTRICT LAND REGISTRAR MERU SOUTH.....3RD RESPONDENT

HON. ATTORNEY GENERAL.....4TH RESPONDENT

JUDGMENT

1. This petition which is dated **16th August, 2018** reads as shown here below. Any spelling or other mistakes, if any exist, are solely ascribable to the Petitioner.

PETITION

TO:

HIGH COURT OF KENYA AT CHUKA

The petition of Obadiah Muruja Mugendi of Chogoria in Tharaka Nithi County in the Republic of Kenya brings petition of his own behalf and whose address of service for the purpose of this petition is C/O Box 310 Chogoria states as follows:

THE PETITION

1. The petitioner Obadiah Muruja Mugendi is a male adult of sound mind resident of Mwema village, Chogoria Location, Meru South Sub County in Tharaka Nithi County. He brings these proceedings on his own behalf.

THE RESPONDENT

2. The 1st respondent is an adult male of sound mind resident of Mumbuni sub-location, Muthambi Location of Tharaka Nithi County.

3. The 2nd respondent is the Land Adjudication Officer of Meru South Sub-County, who is being sued on that behalf and whose address of service for the purpose of this suit is C/O Land Adjudication Officer, Meru South/Maara in Meru-South Sub-County.

4. The 3rd respondent is the District Land Registrar for Meru South Sub-County, who is being sued on that behalf and whose address

of service for the purpose of this suit is C/O District Land Registrar's Office, Meru South Sub-County.

5. The 4th respondent is the Chief Legal advisor to the government and is issued in that capacity.

THE SUBJECT MATTER

6. This petition relates to all that parcel of land measuring approximately 1.22 Hectares known as land fragment No. 1636 Muthambi/Kandungu/adjudication section. The suit parcel is currently registered in the names of Charles Kabiti Japhet, the 1st respondent, under the provisions of the Land Registration Act No. 3 of 2012 (herein after the suit parcel).

THE CAUSE OF ACTION

That in the year 1962 the petitioner purchased a piece of land parcel No. Muthambi Kandungu 136, gathered and walked its boundaries in 1966.

At adjudication committee stage an objection was raised by a Mr. Rubara and under the direction of the 2nd defendant the committee ruled that the parcel measuring 7.35 acres belonged to petitioner. (Produced judgment).

He continued renting his fragment to different tenants and sold to the following;

1. Domisiano Ndeke Nyaga 1.50 acres

2. Franklin Benard Mbae 1.00 acre

3. Lawrence Ntwiga 1.00 acre

3.50 acres

Out of Kandungu 136 measuring 7.35 minus 3.50 acres, I was left with Kandungu/136 measuring 3.85 acres to await registration and issue of title deed no person objected either at the arbitration board or appeal board.

I did not sell or make a proposal for selling to any person except Nalisius Mbae Stanley who had been a tenant on the shamba since 1976 and whom I had agreed to sell only 0.50 points which I transferred to him after the issue of title deed.

Surprisingly the 1st defendant evaded my fragment and in the company of officers from the 2nd defendant's officer and divided my portion parcel No. 136 into two Kandungu 136 measuring 0.50 acres and created a new number Kandungu 1636 measuring 3.00 acres and registered transferred parcel No. 1636 to the 1st defendant Charles Kabiti Japhet fraudulently.

The 1st defendant with support of 2nd defendant entered my fragment and started developing the same.

The petitioner requested to know why the 1st defendant was interfering with petitioner's land and the 1st defendant alleged that he had bought the same from a Mr. Fredrick Mwenda Naincu (deceased) and the transaction had been effected by the 2nd defendant.

The petitioner after lodging complaint in the office of 2nd defendant the 2nd defendant confirmed that the origin parcel no. of 1636 cannot be traced and it could be concluded that it was none other than Kandungu 136 whose acres were missing.

The petitioner has appealed to several dispute tribunals which alleged that they had no legal powers to cancel title deeds.

The 2nd defendant in his letter to the provincial land tribunal Ref. No. LNDA/VIII/74 dated 24th January, 2011 confesses that according to RER records parcel No. 636 has no details showing his original parcel.

The letter continues to say there was a fake objection No. 705 and that there were no proceedings that awarded Fredrick Mwenda Naichu the parcel.

Fredrick Mwenda Naichu is a stranger to the petitioner.

However, the petitioner has since established that the suit parcel has been fraudulently and dishonestly awarded and registered in the names of 1st respondent and a title deed issued LR Muthambi Kandungu 1636.

PARTICULARS of fraud and dishonesty on the part of 1st and 2nd respondent.

i. That the petitioner's land was delineated by the 2nd respondent and the parcel given to and registered in the names of the 1st respondent without the involvement or acquiescence of the petitioner contrary to the principles of natural justice that require that a person should not be condemned unheard.

ii. The totality of the 1st and 2nd respondents action and omissions amounted to collusion, dishonesty and fraud.

iii. Depriving the petitioner of his property without following the due process under the land adjudication act as well as the Land Consolidation Act.

That due to the foregoing, the petitioner's right to fair administrative action has been infringed by the respondents.

That the petitioner's right to equal protection and equal benefit of the law was further infringed as well as his rights and to own property.

That the petitioner's petition is for a declaration that parcel No. 1636 Muthambi/Kandungu adjudication section was arbitrarily moved by the 2nd respondents at the behest of the 1st respondent and that his rights under article 27, 40 and 47 have been infringed and thus an order cancelling the register of LR MUTHAMBI/KANDUGU/1636 as issued in the names of Charles Kabiti Japhet.

That despite notice, the respondents have refused to make good the petitioners claim.

That this court has the jurisdiction to hear and determine this petition.

REASONS WHEREFORE the petitioner pray (sic) or judgment to be entered against the respondent jointly and severally for:-

A declaration that parcels No. 1636 Muthambi/Kandugu adjudication section was arbitrary (sic) moved by the 2nd respondent at the behest of the 1st respondent and that the petitioner's rights under article 27, 40 and 47 have been infringed.

(a) An order cancelling the register and /or title of LR Muthambi/Kandugu/1636 as issued in the names of Charles Kabiti Japhet and the fragment be reinstated and registered in the name of petitioner.

(b) Costs of this petition

DATED AT CHUKA THIS 16TH DAY OF AUGUST, 2018

OBANDIAH MURUJA MUGENDI

PETITIONER

2. In support of his petition, the petitioner filed an undated affidavit. The affidavit is reproduced in full below in exactly the way it was filed and any spelling or other mistakes can only be ascribed to the petitioner. It states as follows:

I OBADIAH MURUJA MUGENDI the petitioner in this petition of P. O. Box 310, Chogoria in the Republic of Kenya do swear and state that;

1. I am a male adult of sound mind resident of Mwema village, Chogoria location, Meru South Sub-County in Tharaka Nithi County. I bring these proceedings on my own behalf.

2. The 1st respondent is an adult male of sound mind respondent of Mumbuni Sub-Location of Tharaka Nithi County.

3. The 2nd respondent is the Land Adjudication Officer of Meru South Sub-County, who is being sued on that behalf and whose address of service for the purpose of this suit is C/O Land Adjudication Officer, Meru South Maara in Meru South Sub-County.

4. The 3rd respondent is the District Land Registrar for Meru South Sub-County, who is being sued on that behalf and whose address of service for the purpose of this suit is C/O District Land Registrar's Office, Meru South Sub-County.

5. The 4th respondent is the Chief Legal Advisor to the government and is sued in that capacity.

6. This petition relates to all that parcel of land measuring approximately 1.22 Hectares known as land fragment No. 1636 Muthambi Kandugu Adjudication section. The suit parcel is currently registered in the names of Charles Kabiti Japhet, the 1st respondent, under the provisions of the Land Registration Act No. 3 of 2012 (herein after the suit parcel).

7. That in the year 1966 during the land gathering, consolidation and adjudication process in the Muthambi/Kandugu adjudication section. The petitioner walked the boundaries of land fragment No. 136.

8. That upon the petitioner walking the boundaries of the land fragment No. 1636 filed a dispute at committee level whereupon the land committee under the directions of the 2nd respondent ordered that land fragment No. 136 by the committee, no person objected to the findings and the decision of the committee.

9. That upon the petitioner being awarded land fragment No. 136 by the committee, no person objected to the findings and the decision of the committee.

10. That there have no objections lodged either at the arbitration board or the appeals board as against the petitioner and that no objections appeared in adjudication register as against the petitioner in respect of the suit parcel.

11. However the petitioner has since established that the suit parcel has been fraudulently and dishonestly awarded and registered in the names of the 1st respondent and a title deed issued thus the new parcel being LR MUTHAMBI/KANDUGU/1636.

PARTICULARS OF FRAUD AND DISHONESTY ON THE PART OF THE 1ST AND 2ND RESPONDENT

That the petitioner's land was delineated by the 2nd respondent and the parcel given to and registered in the names of the 1st respondent without the involvement or acquiescence of the petitioner contrary the principles of natural justice that require that a person should not be condemned unheard.

The totality of the 1st and 2nd respondent's actions and omissions amounted to collusion, dishonestly and fraud.

Depriving the petitioner of his property without following the due process under the Land Adjudication Act as well as the Land Consolidation Act.

Failing to take due regard to article 40 of the Constitution of Kenya which protects the petitioner's rights and interest.

12. That due to the foregoing, the petitioner's right to fair administration has been infringed by the respondents.

13. That the petitioner's right to equal protection and equal benefit of the law was further infringed as well as his right to own property.

14. That the petitioner's protection is for a declaration hat parcel No. 1636 Muthambi/Kandugu adjudication section was arbitrarily moved by the 2nd respondent at the behest of the 1st respondent ad that his rights under article 27, 40 and 47 have been infringed and thus an order cancelling het register of LR MUTHAMBI/KANDUGU/1636 as issued in the names of Charles Kabiti Japhet.

15. That despite notice, the respondents have refused to make good the petitioners claim.

16. That this court has the jurisdiction to hear and determine this petition.

17. That I swear this affidavit in support of the petition filed herewith.

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

3. On **16th August, 2018**, the Petitioner filed an undated witness statement. The statement is reproduced herebelow in exactly the same form as it was filed and any spelling or other mistakes are ascribable to the Petitioner.

WITNESS STATEMENT FOR OBADIAH MURUJA MUGENDI

My names are Obadiah Muruja Mugendi from Mwema village Munga sub-location, Murugi East Location, Maara sub-county in Tharaka Nithi County.

In 1962 I purchased a piece of land parcel number Muthambi/Kandungu/136 measuring 7.82 acres.

Contributed compulsory cut percent of 0.47 points and I was left with 7.35 acres which I continued renting to different tenants and also selling and transferring part of parcel as follows:-

To Domisiano Ndeke Nyaga P. No. 1635 1.50 acres

Franklin Bernard Mbae P. No. 1638 1.00 acres

Lawrence Ntwiga P. No. 1639 1.00 acres

Out of my parcel No. Kandugu/136 my balance was 7.35 minus 3.50 =3.85 acres.

No person raised any objection either at the arbitration board or Land Appeals Board. I therefore awaited issue of title deed.

I did not sell or make a proposal for selling to any person except Nalisius Mbae Stanley who had been one of my tenants since 1976 and whom I had agreed to sell only 50 points once I received my title deed.

Surprisingly the 1st defendant in company of officers from 2nd defendant's office invaded my land, created a boundary in my land parcel and also created a new number 1636.

The fragments measuring 0.50 acres and 3.35 acres. I was left with my original No. 136 measuring 0.50 acres and 1636 measuring 3.35 acres was fraudulently transferred to a Mr. Charles Kabiti Japhet who claimed to have purchased the same from Fredrick Mwenda Naichu (deceased).

I went to complain in land office the office of 2nd defendant confessed that they have no details in their record to indicate the origin of parcel No. 1636. But despite the confession did not rectify the error. I appealed to different land dispute tribunals who allegedly said that they had no powers to handle fraudulent registration.

In his letter to provincial land appeals Ref. No. LND/LA/1/VIII/74 dated 24th January, 2011 copy enclosed the 2nd defendant admitted that he doesn't have any details to show where parcel no. 1636 originated from.

He confesses that there was fake and fraudulent objection No. 705 with No. proceedings that transferred the land to the 1st defendant.

I do not know Fredrick Mwenda Naichu and I have never negotiated or sold any part of land to him.

The fraudulent action committed by the 1st defendant at the behest of 2nd defendant has deprived me my property without following due process under the land adjudication act as well as land consolidation act. Right to equal protection and equal benefit of law as well as right to own property.

I am therefore petitioning for a declaration that parcel No. 1636 Muthambi Kandungu Adjudication section was arbitrary (sic) moved by the 2nd respondents at the behest of the 1st respondent and that my rights under article 27, 40 and 47 have been infringed and thus an order cancelling the register LR Muthambi/Kandungu/1636 as issued in the names of Charles Kabiti Japhet and replaced with petitioners.

That despite notice the respondents have failed to take any action.

That this court has jurisdiction to hear and determine their petition.

That is all I have to state.

.....

OBADIAH MURUJA MUGENDI.

4. Also on **16th August, 2018**, the petitioner filed an undated witness statement signed by one Domisiano Ndeke Nyaga as his witness. The said witness statement is reproduced herebelow in exactly the same form as it was filed and any spelling or other mistakes are ascribable to the Petitioner or his witness.

WITNESS STATEMENT FOR DOMISIANO NDEKE NYAGA

My names are Domisiano Ndeke Nyaga from Kathungune village, Kithitu sub location Muthambi Location Maara Sub-County in Tharaka Nithi County.

The petitioner owned a piece of land parcel No. Muthambi/Kandungu/136 from which he sold me part of it. (1.5 acres) and I was given my parcel No. 1635 before registration.

His portion was a big shamba about 7 acre which he continued lending to several tenants.

I occupied the parcel immediately and I received my title deed parcel No. Muthambi/Kandungu/1635.

That is all I have to state.

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DOMISIANO NDEKE NYAGA

5. The 1st Respondent, Charles Kabiti Japhet, in opposition to this petition, filed on **3rd September, 2018**, an undated witness statement. The said statement is reproduced hereby in exactly the same form as it was filed and any spelling or other mistakes are ascribable to the 1st respondent.

WITNESS STATEMENT FOR 1ST RESPONDENT

My name is Charles Kabiti Japhet resident at Mumbi Village, Kandungu Sub-Location, Kandungu Location, Maara Sub-County, Tharaka Nithi County. I am living hereby virtue of buying the land. I originally come from Meru County.

That I am the 1st Respondent herein. I do not know the petitioner in this case. I know parcel land known and designated as LR NO. Muthambi/Kandungu/1636. I am the registered proprietor of the said land LR No. Muthambi/Kandungu/1636 having bought this land in the year 2001 from one Fredrick Mwenda Naichu who is now deceased and after following all the laid down procedures I obtained my title deed to the said land after which I extensively developed the said land. I built a home and lived comfortably. Unfortunately on 30th December, 2008, my house burned down with everything in it.

When I was mourning my house I got summons from Obadiah. I saw him for the first time when he sued me at Muthambi Division Land Dispute Tribunal vide case no. 12/2009. His claim was that I was illegally on his parcel of land and he prayed I be evicted. After the panel hearing both the plaintiff and I together with witnesses the panel found out that I was legally in the suit land and the suit land belonged to me. The plaintiff case was dismissed. (Copy of the ruling attached).

In the year 2010 my daughter passed away and I buried her in my land Muthambi/Kandungu/1636. While I was mourning my house and my daughter, summons again from Obadiah. He had appealed to Eastern Province Land Dispute Tribunal Embu, Appeal Case No. 88/2010. After hearing of the appeal, the Eastern Province Land Dispute Appeal panelists upheld the decision of Muthambi Division Land Dispute Tribunal. The appeal was dismissed (Copy of the Ruling attached).

In the year 2013, my son passed away and I buried him in my land Muthambi/Kandungu/1636. While I was lamenting my son, summons gain from Obadiah, Case No. 109/2014. He sued me in the Senior Principal Magistrate Court at Chuka.

This case delayed in court and on 6th April, 2017, the plaintiff withdrew the case before it was heard and determined. (Copy of the notice of withdrawal attached).

On 29th August, 2018, summons again from Obadiah. The allegations are similar to those of case NO. 109/2014 which he withdrew. May I state that I am not party to fraud and collusion. I am an innocent buyer.

I bought my 3 acres land, Muthambi/Kandungu/1636 very expensive at Kenya Shillings Three Hundred Thousand Shillings Only (Kshs.300,000/=).

I have built a very expensive house in the said land. I have installed piped water and electricity. I have developed my land extensively.

I have lived in my land for 18 years and above all I have buried my beloved ones in my land, Muthambi/Kandungu/1636.

What surprises me about Obadiah is that I started living in the sid land Muthambi/Kandungu/1636 in the year 2001 and as long as Fredrick Mwenda Naichu was alive, Obadiah had no claim against me, or against Fredrick Mwenda Naichu. Fredrick Mwenda Naichu passed away in the year 2006 and in 2009, Obadiah rose against me up to date.

He (Obadiah) has tortured me enough and I pray the court to dismiss his petition and with costs and also visit Case No. 109/2014 with costs.

That is all I have today.

CHARLES KABITI JAPHET

6. The 2nd, 3rd and 4th respondents, through the Attorney General, filed grounds of opposition dated 3rd October, 2018. The grounds are reproduced herebelow in exactly the same form as they were filed:

2ND – 4TH RESPONDENTS GROUNDS OF OPPOSITION

TAKE NOTICE that the 2nd – 4th respondents will oppose the entire petition dated 16th day of August, 2018 on the following grounds amongst others:

1. That the petitioner makes no allegation of any infringement or violation of the petitioner's rights by the 2nd – 4th respondents.
2. That the petitioner has failed to plead with specificity the articles of the constitution the 2nd – 4th respondents have allegedly infringed or any particulars of such infringement as required for any case to meet the constitution threshold of a petition.
3. That he petition dated 16th day of August, is therefore bad in law and otherwise abuse of courts process and ought to be dismissed with costs.

DATED AT MERU 3RD THIS DAY OF OCTOBER, 2018

MBAIKYATTA DARLIVE

LITIGATION COUNSEL

FOR: HON. ATTORNEY GENERAL &

DEPARTMENT OF JUSTICE.

7. Only the Petitioner and the 1st respondent filed written submissions. The petitioner filed 2 sets of submissions. The first set is dated 8th November, 2018. The second one which he describes as “Final Submission” is dated 19th November, 2019. I deem that it subsumes the one dated 8th November, 2018. It is reproduced herebelow in exactly the form it was filed and any spelling or other mistakes are ascribable to the Petitioner.

FINAL SUBMISSION BY THE PETITIONER

My Lord the Petitioner has now received Notice of Appearance, Response submission and other documentary evidences which were filed in this court by the 1st Respondent on 6th November 2018 all of which does not establish any ground for the 1st Respondent to continue occupying the Petitioners parcel of land No. Kandungu/1636 which has been fraudulently extracted from Petitioners Original parcel No. Kandungu/136 without justifying transaction document or consent from the petitioner.

The petitioner had purchased 7.85 acres of land back in 1962, parcel No. Kandungu /136 which he sold and transferred officially to three purchasers before issue of title deeds.

Domisiano Ndeke 1.50 acres, Franklin Bernard Mbae 1.00 acres and Lawrence Ntwiga 1.00 acres and out of 7.85 less 3.50 the Petitioner was left with 3.85 acres to await registration and issue of Title deed. No. Objection was made either at the arbitration Board or Appeal Board.

It was at this waiting period that the 1st and 2nd Respondent colluded and deprived 3 acres from Petitioner’s parcel No. 136 and 2nd Respondent gave a New No. Kandungu/1636 and registered the same in the name of 1st Respondent and assisted the 1st Respondent to occupy petitioners’ land hence depriving him right to his property.

The 1st Respondent alleges to be an innocent buyer who was guaranteed by the 2nd Respondent and dared not investigate whether the seller had obtained the property legally or fraudulently even after complaints.

I had filed Principal Magistrate Court case No. 109/2014 which I withdrew to file this petition as advised.

The Petitioner has registered dispute in different dispute solving authorities who only claimed that they had no powers to alter or cancel Title Deeds.

In Muthambi Land Dispute Tribunal findings dated 16/2/2010 filed by the 1st Respondent confirmed in the last paragraph that the parcel was owned by the petitioner before A.R objection No. 705. which was imaginary. We have never made any case with Fredrick Mwenda Naincu and he is not even known to me. The 2nd Respondent in his letter to Provincial Land Appeals Committee Embu Ref. No. LND /A/VIII/74 dated 24th January 2011 confesses that RER records parcel Kandungu/1636 has no details showing its original parcel, and continues to confess that there are no proceedings that awarded Fredrick Mwenda Nainchu the parcel. Indicating that the fraud was probably committed by predecessor.

The 2nd Respondent and the 3rd Respondents have not denied these allegations so far.

My Lord the petitioner and the 1st Respondent are living in different administrative divisions so it was not possible to know whether the 1st respondent was burying his children in Petitioners land if the 1st Respondent alleges that he did not obtain the disputed parcel fraudulently then he cannot deny handling illegally obtained property.

The petitioner urges the court to find that his fundamental rights and freedoms under above articles has been infringed for 18 years and urges the court to cancel the name of the proprietor of Title No. 1636 and replace with the petitioners and also compensate the petitioner for the damages suffered , issue of vacation notice and also cost of this petition.

That is all I have to submit.

DATED THIS19THDAY OF.....NOVEMBER,.....2018

8. The submissions filed by the 1st respondent, dated 6th November, 2018 are reproduced herebelow in exactly the form they were filed and any spelling or other mistakes may only be ascribed to the 1st Respondent.

1ST RESPONDENT SUBMISSION

That I am Charles Kabii Japhet living in Kandungu Sub- location, Kandungu Location, Muthambi ward, Maara Sub- county, Tharaka Nithi County.

I am living here by virtue of buying the land. I am originally come from Imenti South Sub- County, Meru County.

That in the year 2001 a friend not in Court came to me and told me there was a piece of land being sold. I asked him to call the owner. The following day he came and he introduced himself to me as Fredrick Mwenda Naichu. He showed me the land and told, he wanted to sell it wholly because of University fees. It was 3 acres and he wanted Ksh.300, 000. To make assurance double sure I told him we meet at the land Office Chuka. The next day we met at Chuka Land Office and I confirmed the Land Parcel Muthambi/Kandungu 1636 was his officially. We filed the transfer forms and he transferred land parcel Muthambi/Kandungu No.1636 to me and we went to bank and gave him his due Ksh.300,00 in form of a bankers Cheque .

That he went his way and I embarked on the shamba, built a house and lived comfortably. Unfortunately on 30th Dec 2008, my house burned down with everything in it.

That in the year 2009 I got my Title deed. It is this year 2009 while I was mourning my house that I got summons from Obadiah. He had sued me at Muthambi Land Dispute Tribunal. Vide case 12/2009 while at Muthambi Land Dispute Tribunal Court is where I saw Obadiah for the First time. His claim was I was living in his shamba illegally. He prayed that I be evicted. After hearing both parties and their witnesses the panel found out I was legally in the suit land and the suit land belong to me Obadiah case was dismissed. (copy of the proceedings and award attached).

That in the year 2010 my daughter passed away and I buried her in my land Muthambi Kandungu/1636 while I was mourning my house and my daughter, summons again from Obadiah. He appealed to Eastern Province Land dispute Embu. Appeal case No.88/2010. After hearing of the appeal, the appeal panelists upheld the decision of Muthambi Division Land Dispute Tribunal. The appeal was dismissed. (Copy of proceeding and a ward attached).

That in the year 2013 my son passed sway and I buried him in my land Muthambi/Kandungu/1636 while I was lamenting my son, summons again from Obadiah case No. 109/2014. He sued me in the Senior Principal Magistrate Court Chuka. On 6th April 2017, the plaintiff i.e Obadiah withdrew the case before it was heard and determined. (Copy of the notice withdrawal attached).

That on 29th August 2018 I got summons from Obadiah. The allegations are similar to those of the case 109/2014 which he withdrew.

MY OPINION

I believed and trust that land parcel Muthambi/Kandungu/1636 is mine and no other because of the following.

1. I bought it from Fredrick Mwenda Naichu
2. From 2001 when I bought this land up to 2009 there was no complain from Obadiah either to Fredrick Mwenda Naichu or to me and he (Obadiah) was not overseas.
3. I have lived in this land for 18 years whereas:-
 - a) I have built a very expensive house
 - b) Installed piped water
 - c) Developed my land intensively
4. I have buried my children in the said land at different intervals and no complain no objection, no court injunction from Obadiah.

PRAYER

1. Obadiah has tortured me both physically mentally for no apparent reason. I am innocent purchaser. May this Court dismiss his petition and with cost
2. He has associated me with fraud. Collusion and dishonesty which is corruption. So he has character – assassinated my name. May this Court demand him to clean my name.
3. May this Court visit case NO.109/2014 which he withdrew and with cost.

That is all I have to submit

DATED 6TH NOVEMBER 2018

7. I find that the only issues for determination in this matter are if or if not the Petitioner has satisfied the court that his constitutional rights had been infringed upon and if the petitioner's prayers should be granted.

8. I note that the Petitioner has approached this suit as if it is filed by way of plaint. From his evidence the adjudication process took place way back in **1966, 53 years ago**. He does not explain why he is bringing this matter to court now **after over 5 decades** since the adjudication process took place.

9. I am in agreement with the grounds of opposition raised by the 2nd, 3rd and 4th respondents that the Petitioner makes no specific allegations of infringement or violation of his rights by the 2nd, 3rd and 4th respondents. I also agree that the petitioner has not pleaded with any specificity or at all the Articles of the constitution that the 2nd, 3rd and 4th respondents have infringed. As such, I would readily find that the petition is bad in form and law and, for this reason, ought to be dismissed.

10. It is noted that the Petitioner filed Chuka Principal Magistrate's Civil Suit No. 109 of 2014 and inexplicably withdrew it about 3 years later on **6th April, 2017**.

11. The witness statements filed by the Petitioner and his witness, Domisiano Ndeke Nyaga, only complain about the adjudication process. No constitutional issues are raised therein.

12. I opine that there is nothing unconstitutional about the adjudication and consolidation processes which are anchored upon the provisions of the Land Adjudication Act (Chapter 284, Laws of Kenya) and the Land Consolidation Act (Chapter 283, Laws of Kenya).

13. A perusal of the filings made in this court makes it pellucid that the parties participated in the dispute resolution process provided for by adjudication and consolidation laws. Eventually, the appellant filed an appeal at the Eastern Province Land Dispute Appeals Tribunal at Embu. His appeal was dismissed on 18th July, 2011, eight years ago. It is not clear if or if not he appealed to the High Court within 60 days of the date of the decision which dismissed his appeal and, if he did so, what the outcome was.

14. It is pellucid that the Petitioner actively participated in the proceedings before the Eastern Land Dispute Appeals Tribunal. I find that there was nothing unconstitutional about that process.

15. The upshot of what I have already said is that I find that this Petition lacks merit.

16. In the circumstances, I issue the following orders:

(a) This petition is dismissed.

(b) Costs are awarded to the Respondent.

Delivered in open Court at Chuka this 29th day of May, 2019, in the presence of:

CA: Ndegwa

Obadiah Muruja – Petitioner

Charles Kabiti Japhet – 1st Respondent

P.M. NJOROGI

JUDGE