



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT CHUKA

CHUKA ELC CIVIL CASE NO. 13 OF 2017

FORMERLY MERU ELC CIVIL APPEAL CASE NO. 31 OF 2011

BORANA KIARA.....APPELLANT

VERSUS

BILISTA KAMBURA MIRITI (REPRESENTING THE ESTATE OF

ADELINA GAAJI MAGIRI (DECEASED).....RESPONDENT

RULING

1. This application is dated **14th May, 2019** and came to court through the route of a certificate of urgency. It seeks the following orders:
 1. That this application be certified urgent and heard *ex parte* in the first instance.
 2. That this honourable court be pleased to stay the execution of the judgment and decree of this honourable court delivered on the 11th day of December, 2018 allowing for 2 acres of land to be excised from LR.MWIMBI/S. MUGUMANGO/495 and be marked by way of beacons registered in the name of the respondent Adelina Gaji Magiri, within 6 months of the judgment pending the hearing and determination of this application.
 3. That the honourable court be pleased to review the judgment and decree of this honourable court delivered on the 11th day of December, 2018 and make a substitute order that the appellant/applicant is the one entitled to the 2 acres of land.
2. The application has the following grounds:
 - a) That the applicant is aggrieved by the judgment and decree of the honourable court delivered on the 11th day of December, 2018.
 - b) That the respondent has served the applicant with a notice to have (sic) out 2 acres out of his land parcel known as LR. MWIMBI/S.MUGUMANGO.
 - c) That the Land District Tribunal lacked jurisdiction to make a verdict affecting title to land.
 - d) That the magistrate's court adopted the decision of the tribunal and ultimately the Land and Environment Court at Chuka largely adopted the same albeit making some further orders.
 - e) That the applicant stands to suffer irreparable loss if the orders sought herein are not granted.
 - f) That the orders sought herein should be granted in the interests of justice.
3. The application is supported by the affidavit of the applicant sworn on 14th May, 2019 which states as follows:
 - I, BORANA KIARA Care of P. O. Box 822, 60100, EMBU within the Republic of Kenya do hereby make oath and state as follows:
 1. That I am the applicant herein thus competent to swear this affidavit.
 2. That judgment and decree were delivered and issued in the suit herein on the 11th day of December, 2018 and 29th day of January, 2019 respectively.

3. That court ordered that 2 acres of land be exercised from my land parcel herein known as LR: MWIMBI/S. MUGUMANGO/495 and be marked by way of beacons and be registered in the name of the respondent Andelina Gaji Magiri (deceased) within 6 months from the date of judgment. (Annexed herein and marked BK1 is a copy of the decree).

4. That I was aggrieved by the judgment and decree delivered herein.

5. That I have consulted and been advised by my advocate on record that LDT lacks jurisdiction to hear and determine on matters affecting title to land.

6. That the Land Dispute Tribunal at Kieganguru in land dispute No. 607/2004 made a verdict as to title and ruled that the respondent herein do be granted 2 acres from the parcel of land herein and if she goes back to where she was married then the piece of land so given do remain as family property and be left to the administrator who is the applicant. (Annexed herein and marked BK2 is a copy of the LDT ruling).

7. That the applicant was aggrieved by the decision herein and appealed the same to the magistrates court and the Land and Environment Court at Chuka. That the two honourable courts herein adopted the ruling of the LDT.

8. That I have been served with a notice and the respondent wants to have the 2 acres of land heaved (sic) out from my parcel of land on the 15th day of May, 2019. (Annexed herein and marked BK 3 is a copy of the letter notice).

9. That the respondent has her own parcel of land and is merely refusing to take it up and only wants to frustrate me by taking up part of my parcel of land.

10. That I will suffer irreparable loss if the same is effected.

11. That I do pray for the orders herein to be granted in the interests of justice.

12. That I pray that this honourable court do find in my favour and review its own orders and find that I am entitled to the 2 acres to be heaved out of land parcel LR; MWIMBI/S.MUGUMANGO/495.

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

4. At the hearing of the application exparte, the applicant and his advocate did not come to court.

5. I have, however, carefully considered the pleadings filed by the applicant. This application has been filed 5 months after this court's judgment was delivered on 11th December, 2018. I opine that there has been inordinate delay in the filing of this application. Secondly, I find that there is no sufficient ground for review of this court's judgment. Grounds for review are succinctly laid down by order 45 Rule 1 and 2 of the Civil Procedure Rules. The order states:

1. Application for review of decree or order [Order 45, rule 1.]

(1) Any person considering himself aggrieved -

a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred; or

b) by a decree or order from which no appeal is hereby allowed, and who from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or the order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree or order, may apply for a review of judgment to the court which passed the decree or made the order without reasonable delay.

2. A party who is not appealing from a decree or order may apply for review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the appellate court the case on which he applies for the review.

6. It is clear that there is no demonstration regarding existence of new evidence which was not within the knowledge of the applicant during the proceedings that spawned the judgment the applicant seeks to impugn. It has also not been demonstrated that there was any mistake or error on the face of the record OR any other sufficient reason to warrant the review sought by the applicant.

7. In the circumstances, this application is summarily dismissed in terms of the provisions of Order 45 Rule 3(1) of the Civil Procedure Rules.

8. Having dismissed the application, there can be no stay of execution or consideration of any other order sought by the applicant or his advocates. To be pellucidly laconic, this court declares itself functus officio.

9. For avoidance of doubt, this application stands dismissed.

10. I issue no order as to costs.

Delivered in open court at Chuka this 21st day of May, 2019 in the presence of:

CA: Ndegwa

Mungai h/b Mukami Boore for the Applicant

P.M. NJORGE

JUDGE