



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT CHUKA

CHUKA ELC MISC. APPLICATION CASE NO. 02 OF 2019

GILBERT JOSEPH KIBUNJA ALIAS GILBERT JOSEPH KIBUNJA ALIAS GILBERT JOSEPH KABUNJA

VERSUS

THE COUNTY GOVERNMENT OF THARAKA NITHI.....1ST RESPONDENT

LAND ADJUDICATION AND SETTLEMENT OFFICE MERU SOUTH SUB COUNTY.....2ND RESPONDENT

RULING

1. This application has come to court through the route of a Certificate of Urgency. It is dated **20th May, 2019** and seeks the following orders:

1. That this application be certified as extremely urgent and heard ex-parte in the first instance.

2. That this honourable court be pleased to issue an order of injunction restraining the 1st respondent either by herself, her servants, employees, workers and / or authorized agents or any other person drawing instructions from her from trespassing, constructing, entering, selling, transferring or interfering in any way with the applicant's quiet possession and ownership of the applicant's property being Adjudication Section Kajuki/Kamutiria/P.No.2022 in any way whatsoever pending the hearing and determination of this application.

3. That this honourable court be pleased to issue an order of injunction restraining the 1st respondent either by herself, her servants, employees, workers and/or authorized agents or any other person drawing instructions from her from trespassing, constructing, entering, selling, transferring or interfering in any way with the applicant's quiet possession and ownership of the applicant's property being Adjudication Section Kajuki/Mutiria/P.NO.2022 in any way whatsoever pending the hearing and determination of the Appeal to the minister vide appeal case no. 76 of 2019.

4. That the costs of this application be provided for.

2. The application is supported by the affidavit of Gilbert Joseph Kabujia, the applicant, and has the following grounds:

1. The applicant and the 1st respondent have a long standing dispute over adjudication section Kajuki/Kamutiria/P.No.2022 which is before the 2nd respondent.

2. The dispute led to the lodging of the appeal of case no. 76 of 2019 over the subject parcel of land which remains pending and undetermined.

3. Pending the determination of the appeal, on or about 13th May, 2019, the 1st respondent went forth and put up illegal structures with the intention of defeating the pending appeal before the minister which land the applicant is still in possession having inherited it from his father.

4. If the said putting up of illegal structures is not stopped, the appeal will be rendered nugatory.

5. The said parcel of land is quite emotive as it comprises of a bigger parcel of land which is ancestral and the applicant's father, grandfather and great grandfathers have been in possession of this instant parcel for over one hundred years and their remains have been buried there.

6. The Tribunal does not have any apposite or inherent powers to issue injunctive orders and as such this honourable court should intervene in order to protect the substratum of the appeal being the subject parcel of land.

7. There is likely to be a miscarriage of justice unless this court invokes its inherent jurisdiction to preserve the status quo pending the hearing of the said appeal.

8. This court has unfettered inherent jurisdiction to issue stay orders pending the determination of the appeal to the minister so as to preserve the substratum of the appeal.

9. It is therefore in the interest of justice that the orders sought herein are granted.

3. At the ex parte stage, Mr. Mungai Wainaina, the applicant's advocate asked the court to rely on the apposite pleadings **AND** to grant the orders sought.

4. Mr. Mungai also informed the court that he had served Mr. Kiongo, for the 2nd Respondent, with the application today in court.

5. Having perused the relevant pleadings and having heard the applicant's advocate orally, I find that there is merit, at this ex parte stage, to grant prayer 2 in the application.

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

1. The application is **NOT** certified urgent **BUT** will be heard on priority basis.

2. Prayer 2 is granted.

3. The applicant is directed to serve the respondents within 7 days of today.

4. Parties to come to court for interpartes hearing on **12th June, 2019.**

7. Costs are to be in the cause.

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

CA: Ndegwa

Mungai for the Applicant

Kiongo for AG for the 2nd Respondent

P.M. NJOROGE

JUDGE