



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT CHUKA

CHUKA ELC CASE NO. 112 OF 2017

FORMERLY MERU ELC 147 OF 2009

ROYFORD RIUNGU KUURA.....1ST PLAINTIFF

WASHINGTON KIRIMI KUURA.....2ND PLAINTIFF

CHARLES NYAGA KUURA.....3RD PLAINTIFF

VERSUS

M.KUURA M'RIRIA.....1ST DEFENDANT

TURA KARINGURI.....2ND DEFENDANT

ATTORNEY GENERAL.....3RD DEFENDANT

RULING

1. This application is dated **20th May, 2019** and seeks orders:

- a. That this application be certified urgent and service of the same be dispensed with in the first instance.
- b. That the honourable court be pleased to give directions and clarifications that are necessary for the complete execution of the decree of the court issued on 19th March, 2018 with respect to orders issued to the District Land Registrar Chuka.
- c. That the honourable court be pleased to make such order as it may deem fit in the circumstances.
- d. That costs of this application be provided for.

2. It is supported by the affidavit of Charles Nyaga Kuura and has the following grounds:

1. That the applicants are the decree-holders from the judgment of the court of 19th March, 2018.
2. That among the various orders granted by the honourable court, orders (a), (b) and (c) were directed at the district Land Registrar – Chuka.
3. That upon service of the decree on the District Land Registrar – Chuka, the Registrar intimated that Order (c) could not be enforced in its current nature.
4. That whereas there is a direction for him to cancel titles belonging to the 1st and 2nd defendant herein the parcel numbers are unknown and hence he can't proceed with enforcement.
5. That for purposes of compliance the parcel numbers that need cancellation have to be indicated to avoid confusion and error on the part of the Registrar.
6. That from the pleadings herein, the parcels in dispute were parcel number 1266 and 503 that are registered to the 1st and 2nd defendants respectively.

7. That these are the properties that the honourable made orders against and the District Land Registrar insists that they have to be indicated on the decree before he proceeds to carry out the orders of the court.

3. The applicant's supporting affidavit sworn on **20th May, 2019** reads as follows:

I, Charles Nyaga Kuura of Post Office Box Number 147 Thika in the Republic of Kenya do hereby make oath and state as follows:

1. I am an adult of sound mind and have authority to make this affidavit on my own and on behalf of my co-applicants.
2. That the honourable court delivered judgment in favour of I and my co-applicants on the 19th March, 2018.
3. That thereafter I and my co-applicants applied and were supplied with the decree. Annexed hereinto and marked "CNK 1" is a copy of the decree.
4. That further I and my co-applicant were issued with a certificate of costs with respect to party and party bill of costs. Annexed hereinto and marked "CNK 2" is a copy of the certificate of costs.
5. That order (b) and (c) of the judgment were directed at the District Land Registrar – Chuka; pursuant to Order (b) The Land Registrar was directed to restore the Land Register/Record pursuant to an order made in H.C Misc. App No. 257 of 1983 while Order (c) directed the Land Registrar to cancel titles issued to the 1st and 2nd defendant.
6. That upon visiting the Land Registrar – Chuka and serving him with the decree of this honourable court, the Land Registrar expressed difficulty in executing the decree as it was, on account of lack of particularization on the land titles that needed cancellation.
7. That without the court expressly proving the parcel numbers that were to be cancelled the Registrar was apprehensive and unwilling to enforce the orders and this could only be remedied by the court, necessitating this application.
8. That without the court's intervention for the ends of justice to be met, the applicants herein will suffer grave injustice and immeasurable loss bearing in mind it's a land matter where they have sought for justice more than 4 decades now.
9. That it is in the interest of justice and fairness that the court intervenes to ensure compliance with its orders.
10. That what is hereinabove deponed to is true to the best of my knowledge and belief.

4. Mr. Manyara told the court that the Land Registrar Chuka had said that he could not implement order (C) in the judgment because Parcel No. **MUTHAMBI/GATUA/503** was not particularized in the judgment. He told the court that this parcel was all along part of the proceedings.

5. I have perused the proceedings and find that what Mr. Manyara has said is correct. A correction in terms of the provisions of section 99 of the Civil Procedure Act is merited to correct this accidental omission.

6. In the circumstances, the judgment delivered by the court on **19th March, 2018** should read as follows:

(19) Judgment is entered for the plaintiffs against the defendants in the following terms:

- a) It is declared that the subdivision by the 3rd defendant's agents of the original Land Reference Numbers Muthambi/Gatua/1266 and Muthambi/Gatua/503 and subsequent changes in the Land Register/ Record at Chuka are null and void.
- b) An order is hereby issued directing the Land Registrar – Chuka to restore the Land Register /Record pursuant to an order made in H.C Miscellaneous Application No. 257 of 1983.
- c) The District Land Registrar – Chuka is ordered to cancel all titles issued to the 1st and 2nd defendants after Parcel Numbers Muthambi/Gatua/1266 and Muthambi/Gatua/503 were subdivided.
- d) Nominal General Damages in the sum of Kshs. 200,000/= are awarded to the plaintiffs.
- e) An order is issued directing that the defendants be evicted by the apposite legal entities with the assistance of the Officer Commanding Police Station (OCS) who is in charge of the area where the apposite land is situated.
- f) Costs of this suit are awarded to the plaintiffs.
- g) Interest on (d) and (f) is awarded to the plaintiffs with effect from the date of delivery of this judgment.
- h) Suits which were consolidated with this suit through an order issued by **this Court on 20th February, 2014 are deemed heard**

and determined.

7. It is so ordered.

Delivered in open court at Chuka this **22nd day of May, 2019** in the presence of:

CA: Ndegwa

Manyara for the Applicant

P.M. NJORGE

JUDGE