



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT CHUKA

ELC PETITION NO. E004 OF 2024

AGNES GATUNE JOTHAM (*Suing as the Administrator of the Estate of JOTHAM NJAGI M'RUCHA - Deceased*).....
.....PETITIONER

=VERSUS=

WILFRED NYAGA M'MUGA (*Being sued as the Administrator of the Estate of M'MUGA THAMBURIA - Deceased*).....1ST
RESPONDENT

WINFRED KARIMI NJERU.....2ND
RESPONDENT

MERCY NJERI KARIUKI.....3RD
RESPONDENT

JACKLINE K. NYAGA.....4TH
RESPONDENT

NELLY NKIROTE NYAGA.....5TH
RESPONDENT

DOREEN GATWIRI NYAGA.....6TH
RESPONDENT

KINYUA M'MUGA.....7TH
RESPONDENT

THE LAND REGISTRAR, METU SOUTH.....8TH
RESPONDENT

THE HON. ATTORNEY GENERAL.....9TH RESPONDENT

JEFFERSON NJAGIH NJERU.....1ST INTERESTED PARTY

ROSEJOY NJERI NJERU.....2ND INTERESTED PARTY

NICHOLAS KAMUNDI NJERU.....3RD INTERESTED PARTY

ARNOLD GITONGA NJERU.....4TH INTERESTED PARTY

RULING

1. This cause was initiated under the Bill of Rights vide a petition dated 17/9/2024. The petition was amended on 12/3/2025. It was further amended on 28/7/2025. Through the further amended petition, the estate of the late **Jotham Njagi M'Rucha** seeks: (i) a declaration that its rights have been infringed; (ii) a declaration that the suit properties (**Muthambi/ Igamurathi/ 132, 373 and 690**) were fraudulently or through misrepresentation registered in favour of **M'Muga Thamburia** (deceased), hence the registration and the subsequent subdivision and transfers are null and void; (iii) a declaration that the suit properties were illegally, unprocedurally or through a corrupt scheme transferred to the 1st respondent and that the subsequent sub-divisions and/or transfers were obtained illegally, unprocedurally or through a corrupt scheme, hence null and void and that the occupation and possession of the suit properties by the respondent is unlawful; (iv) a rectification order directing the 8th respondent to register the suit properties in favour of the estate of **Jotham Njagi M'Rucha**

(deceased); (v) an order of permanent injunction restraining the 1st to 7th respondents from selling, alienating, transferring, disposing, trespassing on, sub-dividing, erecting structures on or in any way interfering with the petitioner's quiet enjoyment and possession of the suit properties; (vi) an order decreeing eviction of the 1st to 7th respondents and any other third parties and demolition of any illegal structures on the suit land within ninety (90) days; (vii) an order directing the Officer Commanding Station (OCS), Chuka Police Station, to provide security and ensure compliance with the decree of the court; (viii) a declaration that the petitioner is entitled damages and/or compensation for violation of constitutional rights; and (ix) an order awarding the petitioner costs of the petition.

2. Alongside the petition, the petitioner brought a notice of motion dated 17/9/2024. The notice of motion was amended on 12/3/2025. It was further amended on 28/7/2025. Through the further amended notice of motion, the petitioner seeks an interlocutory order of injunction restraining the respondents against selling, alienating, transferring, disposing or in any way interfering with land parcel numbers **Muthambi/ Igamurathi/132; 373 and 690** pending the hearing and disposal of the petition. The said application is the subject of this ruling and is opposed. The key question that falls for determination in the ruling is whether the application under consideration satisfies the criteria for granting an interim injunctive order under **rule 23** of the **Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Procedure and Practice**

Rules (*hereinafter referred to as “the rules”*). I will summarize the parties’ respective cases before I analyse and dispose the issue.

3. The application was premised on the grounds outlined in the motion and in the applicant’s two affidavits dated 28/7/2025 and 2/10/2025. It was canvassed through written submissions dated 2/10/2025, filed by **M/s Gathuku Partners Advocates LLP**. In summary, the case of the applicant is that she is the administratrix of the estate of the late **Jotham Njagi M’Rucha** (*hereinafter referred to as “the late Njagi”*) pursuant to a grant issued to her on 13/1/2021 by the **Chuka Senior Resident Magistrate Court** in **Chuka CMC Succession Cause No E005 of 2020**. **Wilfred Nyaga Muga** (the 1st respondent) is the administrator of the estate of the late **M’Muga M’Thamburia** (*hereinafter referred to as “the late M’Muga”*).
4. The applicant contends that the late Njagi was a son to the late **Marucha Mutuaruchiu** (*hereinafter referred to as “the late Murucha”*). Land parcel numbers **Muthambi/Igamurathi/ 132; 373 and 690** (*the suit properties*) belonged to the late Marucha who was a member of the **Sangu Clan**. The late M’Muga was Marucha’s hearsboy. Upon the demise of **Marucha**, **M’Muga** started cohabiting with Marucha’s widow, the late **Esther Igoji**. **Wilfred Nyaga M’Muga** (the 1st respondent) was born out of the cohabitation.

5. The applicant adds that during land adjudication in the 1960s, the late Njagi was “away in pursuit of academic and career obligations”. Consequently, **Esther Igoji** was constrained by the absence of Njagi and allowed M’Muga to be registered as proprietor of the suit properties “pursuant to the land adjudication as the family’s trustee pending the return of **Jotham Njagi M’Rucha** from his academic and career pursuits.” The applicant at the same time alleges that M’Muga procured registration of the suit properties in his name by misrepresenting himself as a son of the late Marucha.
6. The applicant contends that during the land adjudication process, “the tenets of Ameru Customary Law were not adhered to” because M’Muga “either severally or jointly in collusion with other individuals, fraudulently transferred the suit properties to himself. She contends that the suit lands are trust properties, adding that all beneficiaries of the estate of the late Marucha are entitled to it.
7. Lastly, the applicant states that whereas the late Njagi instituted **Meru HCCC Case No 117 of 2000** (*which was subsequently transferred to Chuka Environment and Land Court and registered as **Chuka ELC Case No 251 of 2017***) against M’Muga, the said case was not heard on merits. She adds that whereas **Esther Igoji** instituted **Meru CMCCC No 189 of 1994** against M’Muga, the said case was, similarly, not heard and determined on merits. She urges the court to issue the interlocutory orders.

8. The 1st, 3rd, 4th, 5th, 6th and 7th respondents oppose the application. Their case is contained in the two affidavits that were sworn by the 1st respondent on 24/10/2024 and 17/4/2025 and in the written submissions dated 20/2/2025 and 16/10/2025, filed through **M/s Kiogora Arithi & Associates**. They fault the petitioner for instituting the petition against the 2nd respondent while aware that the 2nd respondent died on 22/3/2023. They accuse the petitioner of peddling lies “to steal this judicial match.”
9. The six respondents deny the allegation that the suit lands belonged to the late Njagi, adding that the late M’Muga purchased parcel numbers **Muthambi/Igamurathi/132** and **373**. They further state that parcel number **Muthambi/Igamurathi/690** was given to the late M’Muga as compensation during land adjudication after he surrendered part of his land for public utility.
10. The respondents add that the late Njagi impersonated the late **Esther Igoji** by filing **Meru CMCC No 189 of 1994** in her name against the late M’Muga, adding that it was for this reason that the said case was never prosecuted and was eventually dismissed due to want of prosecution.
11. The six respondents state that the late Marucha died around 1938 and Agnes (**the petitioner**) got married to the late Njagi around 1960, hence she cannot purport to know issues relating to the late Marucha. They add that **Chuka ELC Case No 251 of 2017** (*previously instituted as Meru HCCC No 117 of 2000*) which raised the same issues as the issues raised in the present petition was dismissed on 13/12/2017

for want of prosecution and attempts to reinstate it were rejected by this court vide a ruling dated 20/11/2018, hence this petition is *res judicata* and an abuse of the process of the court. They add that the petitioner raised the same issues through a formal protest in the succession cause relating to the estate of the late M'Muga (**Chuka CMC Succession Cause No E076 of 2020**) and upon leading *viva voce* evidence, the succession court rejected the petitioner's protest.

12. The six respondents add that **Wilfred Nyaga M'Muga** is in possession of parcel numbers **Muthambi/Igamurathi/373** and **132** and resides on the said parcels with his family, adding that parcel number **132** is registered in the names of **Jackline K Nyaga, Nelly Nkirote Nyaga** and **Doreen Gatwiri Nyaga**. They state that parcel number **Muthambi/Igamurathi/690** was sold and transferred to **Winfred Karimi Njeru** and **Mercy Njeri Kariuki** who are in possession thereof. They add that the petitioner lives on her late husband's parcel of land which is "across the range from the suit land". They urge the court to reject the plea for an interim injunctive order.

13. The court has considered the application, the response to the application, and the parties' respective submissions. As observed in one of the preceding paragraphs of this ruling, the key issue to be determined in this ruling is whether the application under consideration satisfies the criteria for granting a conservatory or an interim injunctive order under **rule 23** of the **Constitution of Kenya (Protection of**

Rights and Fundamental Freedoms) Procedure and Practice Rules.

- 14.** The criteria upon which our courts exercise jurisdiction to grant conservatory or interim orders in constitutional petitions under **rule 23** of the **Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules 2013** was outlined by **Musinga J** (*as he was then*) in **Centre for Rights Education and Awareness and 7 Others v The Attorney General (HCCP No 16 of 2011)** as follows:

“At this stage, a party seeking a conservatory order only requires to demonstrate that he has a prima facie case with a likelihood of success and that unless the court grants the conservatory order, there is real danger that he will suffer prejudice as a result of the violation or threatened violation of the Constitution.”

- 15.** Suffice it to add that, at this interlocutory stage, the court does not make conclusive or definitive pronouncements on the key issues in the petition.
- 16.** It does emerge from the interlocutory evidence presented to this court that the registrations relating to the three parcels of land which are the subject matters of this petition were culminations of the statutory land adjudication exercise that took place in Muthambi from the 1960s. The late **Jotham Njagi M'Rucha**, whose estate is the petitioner, was an adult man at all material times. No satisfactory reason has been

advanced to explain why he did not step forward to assert his claim through the elaborate claim ventilation mechanisms provided under the Land Adjudication Act. Similarly, no interlocutory evidence has been presented to the court to demonstrate a *prima facie* case of irregularity or corrupt scheme in the procurement of the three impugned registrations. Most significantly, no interlocutory evidence has been presented to demonstrate a breach or violation of any aspect of the Bill of Rights in the procurement of the three impugned registrations.

17. It does also emerge from the interlocutory evidence presented by the respondents that in 2000, the late **Jotham Njagi M'Rucha** initiated **Meru HCCC No 117 of 2000** against the late **M'Muga Thaburia** seeking to annul the three registrations. For 17 years, he did not prosecute his claim. The suit was eventually transferred to **Chuka ELC in 2017** and registered as **Chuka ELC Case No 251 of 2017**. Again, he did not prosecute the case at Chuka Environment and Land Court. Ultimately, this court (**Njoroge J**) dismissed the case in 2018. His attempt to set aside the dismissal order was rejected by this court (**Njoroge J**) vide a ruling dated 20/11/2018. Instead of pursuing an appeal, him and his estate remained inactive for six (6) years before invoking the **Bill of Rights** to challenge the land adjudication registrations that took place before the enactment of the current Constitution. That is not all. This petition raises the same issues as those that were raised in the dismissed suit. At this stage, I doubt that the **Constitution of Kenya 2010**

avail a petitioner liberty to vex the estate of the late M'Muga in the above circumstances.

- 18.** The totality of the foregoing is that, taking into account the interlocutory evidence presented at this stage, I do not think the application under consideration meets the criteria for granting a conservatory order or an interim injunctive order under **rule 23** of the **Constitution of Kenya (*Protection of Rights and Fundamental Freedoms*) Practice and Procedure Rules 2013**. The result is that the application is rejected and dismissed for lack of merit. The applicant shall bear costs of the application.

DATED, SIGNED AND DELIVERED AT CHUKA THIS 26TH DAY OF JANUARY, 2026.

B M EBOSO [MR]

ELC JUDGE

In the Presence of:

Mr. Gathuku for the Petitioners

Respondents - Absent

Ms. Kemboi for the Interested Parties

Court Assistant - Nelly