



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT CHUKA**

**CHUKA ELC CASE NO. 16 OF 2018**

**BERNARD MBAE MUCHEKE.....PLAINTIFF**

**VERSUS**

**THE LAND REGISTRAR THARAKA NITHI DISTRICT.....1<sup>ST</sup> DEFENDANT**

**THE DISTRICT SURVEYOR MERU SOUTH DISTRICT....2<sup>ND</sup> DEFENDANT**

**THE CHIEF LAND REGISTRAR.....3<sup>RD</sup> DEFENDANT**

**THE ATTORNEY GENERAL.....4<sup>TH</sup> DEFENDANT**

**JUDGMENT**

1. In his plaint dated **19<sup>th</sup> December, 2018**, the plaintiff prays for judgment against the defendant as follows:

a) An order for declaration that the demarcation and the subsequent creating of road of access in the plaintiff's portion of land measuring 20 ft by 108 ft which ought to be part of Land Parcel No. Karingani/Ndagani/3182 without the permission of the plaintiff is unlawful, illegal and therefore null and void ab initio.

b) An order requiring the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> defendants to re-survey the said portion of land measuring 20ft by 108 ft and incorporate, consolidate and/or amalgamate the same with the plaintiff's land parcel no. Karingani/Ndagani/3182.

c) An order requiring the 1<sup>st</sup> and 3<sup>rd</sup> defendants to rectify the register for land parcel No. Karingani/Ndagani/3182 to reflect the correct acreage and /or hectares changes after the said incorporation, consolidation and /or amalgamation.

d) An order requiring the 1<sup>st</sup> and the 3<sup>rd</sup> defendants to recall the title deed for land parcel No. Karingani/Ndagani/3182 and subsequently issue the plaintiff with a new title deed reflecting the said changes made in the register and the correct acreage/hectares for the said parcel of land.

e) An order for rectification and/or amendment of Ndagani/registration map sheet No. 15 and /or any other map sheet in possession of the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> defendants in which the plaintiff's land parcel No. Karingani/Ndagani/3182 shall be reflected showing the said rectification and/or amendment and the correct acreage/ hectares of the said plaintiff's land.

f) Costs of the suit.

g) Any other relief the court may deem just and fit to grant.

2. During the hearing, PW1, Bernard Mbae Mucheke, told the court that he relied on his witness statement dated **19<sup>th</sup> December, 2018**. He also told the court that his case was supported by his list of documents dated 19<sup>th</sup> December, 2018. These documents were produced and were marked as plaintiff's exhibits numbers 1 to 9. He also told the court that he had instructed his advocates to frame "issues for determination" and "a case summary", all dated 19<sup>th</sup> December, 2018. He also asked the court to look at documents numbers 7 and 8 being Ndagani Registration sheet Number 15 (number 7) and Sketch Map for Ndagani Registration Section (number 8).

3. Reliant upon his evidence, PW1 asked the court to grant the orders he sought in his plaint (op.cit).

4. The plaintiff's advocate framed the apposite issues for determination in this suit as:

1. Whether the plaintiff is the registered owner of land parcel No. Karingani/Ndagani/3182 and 3183.
2. Where did the plaintiff get land parcel Nos. Karingani/Ndagani/3182 and 3183?
3. Whether the plaintiff bought a portion of land measuring 20ft by 108 ft when he bought land parcel No. Karingani/Ndagani/3182 to enable the said land reach the main road.
4. Whether the said portion of land parcel measuring 20ft by 108ft was to be incorporated, consolidated and / or amalgamated with land parcel No. Karingani/Ndagani/3182.
5. Whether the defendants without the consent, knowledge and / or permission of the plaintiff demarcated and / or created a road of access from the said portion of land measuring 20ft by 108 ft.
6. Is the plaintiff entitled to the prayers sought in the plaint?
7. What appropriate orders should the court give in this case?
8. Who is liable to pay costs of this case?

5. The plaintiff's witness statement dated 19<sup>th</sup> December, 2018 states as follows:

**STATEMENT BY BERNARD MBAE MUCHEKE**

I am the above named person and a resident of Ndagani in Tharaka Nithi County.

I am the registered owner of land parcel Nos. Karingani/Ndagani/3182 and 3183.

I bought the above two parcels of land from one Dickson Kathuri Nyaga.

After I bought the said parcels of land, the said Dickson Kathuri Nyaga transferred them to me and I got registered as the owner of the two parcels of land on 17.12.1993 and 4.11.1994 respectively.

At the time when I was buying land parcel No. Karingani/Ndagani/3182, the registered owner then Dickson Kathuri Nyaga, told me that I had to buy a portion leading to the main road. The said portion was measuring 20ft by 108ft.

I eventually bought the said portion and it became part of my land parcel No. Karingani/Ndagani/3182.

It is to be noted that my two parcels of land bounder each other.

The bigger parcel of land which is land parcel No. Karingani/Ndagani/3183 has its whole frontage facing the main road.

I have been in occupation and use of my two parcels of land from the time I bought them to date.

On 29.10.2018, I visited the offices of the Land Registrar, Tharaka/Nithi District Chuka with the intention of buying copies of the register for my two parcels of land which I managed to buy.

I also went to the offices of the District Surveyor Meru South District and got a sketch map and Ndagani registration section sheet map No. 15 to enable me know the correct location of my two parcels of land in relation to the neighbouring parcels of land.

To my surprise, I noted that the portion of the land which I have referred to hereinbove measuring 20ft by 108ft was marked in the said map as a road of access.

I raised the issue with the Land Registrar, Tharaka/Nithi District and the District Surveyor, Meru South District who informed me that they cannot change and / or interfere with the map and / or implement anything relating to the said portion of land except with the order from the court.

I would like the said portion of my land measuring 20ft by 108 ft be incorporated, consolidated and / or amalgamated with my land parcel No. Karingani/Ndagani/3182. The said portion should not appear in the map as a road of access because it is part of my land parcel No. Karingani/Ndagani/3182.

My prayers to this honourable court are as per the plaint which I have filed in this case.

**DATED AT MERU THIS 19<sup>TH</sup> DAY OF DECEMBER, 2018**

**SIGNED .....**

**BERNARD MBAE MUCHEKE**

6. The plaintiff's Case Summary dated 19<sup>th</sup> December, 2018 reads as follows:

**PLAINTIFF'S CASE SUMMARY**

The plaintiff's claim is that in or about the year 1993 and 1994 respectively, he bought land parcel Nos. Karingani/Ndagani/3182 and 3183 from one Dickson Kathuri Nyaga who eventually transferred the said parcels of land to him.

The plaintiff avers that when he was buying land parcel No. Karingani/Ndagani/3182 he also bought a portion of land measuring 20ft by 108ft from the said Dickson Kathuri Nyaga to enable him (plaintiff) have access to the main road.

The plaintiff therefore honestly believe (sic) that when the land parcel No. Karingani/Ndagani/3182 was transferred and registered in his name, the said 20ft by 108ft were to be part of his land parcel No. Karingani/Ndagani/3182

The plaintiff states that in or about 28<sup>th</sup> October, 2018, he decided to buy copies of the register for his land parcel Nos. Karingani/Ndagani/3182 and 3183 which were duly supplied to him by the Land Registrar Meru South / Tharaka District.

The plaintiff also decided to buy Ndagani Registration Sheet No. 15 to enable him know the position of his land on the ground in relation to his neighbouring parcels of land.

To his surprise, the plaintiff noted that the said portion of land measuring 20ft by 108ft was never included in his land parcel Nos. Karingani/Ndagani/3182 but was marked on the ground as a road of access.

The plaintiff subsequently visited the offices of the District Land Registrar Meru South / Tharaka and the District Surveyor Meru South/Tharaka and demanded that they do make changes to Ndagani Registration Sheet No. 15 and include the said 20ft by 108ft to the plaintiff's land parcel No. Karingani/Ndagani/3182 but they declined stating that they had no power to do so unless with court order, rendering the institution of this suit necessary.

The plaintiff's claim against the defendants is as per the plaint.

The plaintiff has also filed list of documents, witness statement and issues for determination which he will rely on in this case.

The plaintiff prays to the honourable court to allow his claim as prayed in the plaint.

The plaintiff so humbly prays.

**DATED AT MERU THIS 19<sup>TH</sup> DAY OF DECEMBER, 2018.\**

**NYAMU NYAGA & CO. ADVOCATES**

**ADVOCATES FOR THE PLAINTIFF**

7. Mr. Kiongo for the Attorney General, representing all the four defendants, told the court that he was not opposed to the orders sought by the plaintiff as granting those orders would give justice to the plaintiff and would not in any way prejudice the defendants.

8. I opine that the only issue for determination in this suit is if or if not the plaintiff is entitled to the orders he seeks in his plaint.

9. I have considered the pleadings and the evidence proffered by the plaintiff to buttress his assertions and to justify the granting of the orders he seeks in his plaint. Having considered the issues for determination, I find that the creating of a road of access measuring 20 feet by 108 feet from the plaintiff's parcel of Land No. KARINGANI/NDAGANI/3182 was irregular and unlawful. For that reason, the plaintiff is entitled to the orders sought in his plaint except the order for costs. I decline to issue the order for costs against the defendants who are public officers because they have not opposed the plaintiff's claim, and by doing so, have saved this court's precious judicial time.

10. In the circumstances, I issue judgment in favour of the plaintiff against the defendants in the following manner:

a) An order is hereby issued for declaration that the demarcation and the subsequent creating of road of access in the plaintiff's portion of land measuring 20ft by 108ft which ought to be part of land parcel No. Karingani/Ndagani/3182 without the permission of the plaintiff is unlawful, illegal and therefore null and void ab initio.

b) An order is hereby issued requiring the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> defendants to re-survey the said portion of land measuring 20ft by 108ft and incorporate, consolidate and / or amalgamate the same with the plaintiff's land parcel No. Karingani/Ndagani/3182.

c) An order is hereby issued requiring the 1<sup>st</sup> and 3<sup>rd</sup> defendants to rectify the register for land parcel No. Karingani/Ndagani/3182 to reflect the correct acreage and / or hectares changes after the said incorporation, consolidation and / or amalgamation.

d) An order is hereby issued requiring the 1<sup>st</sup> and the 3<sup>rd</sup> defendants to recall the title deed for land parcel No. Karingani/Ndagani/3182 and to subsequently issue the plaintiff with a new title deed reflecting the said changes made in the register and the correct acreage / hectares for the said parcel of land.

e) An order is hereby issued for rectification and / or amendment of Ndagani Registration Map Sheet No. 15 and / or any other map sheet in possession of the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> defendants in which the plaintiff's land parcel No. Karingani/Ndagani/3182 shall be reflected showing the said rectification and / or amendment and the correct acreage / hectares of the said plaintiff's land.

11. Although in usual circumstances costs follow the event, no costs are awarded in this suit to the plaintiff .

12. It is so ordered.

**Delivered in open Court at Chuka this 7<sup>th</sup> day of May, 2019 in the presence of:**

CA: Ndegwa

Nyamu Nyaga for the Plaintiff

Kiongo for the Defendant

**P. M. NJOROGE**

**JUDGE**