



**REPUBLIC OF KENYA**

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

**CHUKA ELC MISCELLANEOUS CASE NO. 03 OF 2019**

**WILLIAM MUTURA KAIRIBA.....APPLICANT**

**VERSUS**

**SAMUEL NKARI.....1<sup>ST</sup> RESPONDENT**

**SAMUEL KATHIGA.....2<sup>ND</sup> RESPONDENT**

**DANIEL MUGAO.....3<sup>RD</sup> RESPONDENT**

**FRANCIS RUTEERE.....4<sup>TH</sup> RESPONDENT**

**THE COUNTY GOVERNMENT OF THARAKA NITH....5<sup>TH</sup> RESPONDENT**

**RULING**

1. This application has been brought to court under Sections 1A, 1B and 3A of the Civil Procedure Act, under section 30 of the Land Adjudication Act, Order 40(1) (a) of the Civil Procedure Rules and all other provisions of the law.

2. The application seeks the following orders:

1. That due to the urgency of this motion, the same be certified urgent, service of the same be dispensed with and the motion be heard ex-parte in the first instance.

2. That upon hearing exparte, a temporary order of injunction be issued restraining the respondents by themselves, their personal representatives, their servants, agents and/or employees from trespassing and/or encroaching, leasing out, cutting down trees, alienating, cultivating, grazing, building, interfering with the applicant's peaceful use, occupation and title to the suit property, or in any other manner interfering with the parcel of land known as Mukothima "A" Adjudication Section Gikingo Location P/No. 150 pending hearing and determination of this application.

3. That a permanent injunction be issued against the respondents whether by themselves, their personal representatives, their servants agents and/or employees from trespassing and/or encroaching, leasing out, cutting down trees, alienating, cultivating, grazing building, interfering with the applicant's peaceful use, occupation and title to the suit property, or in any other manner interfering with the parcel of land known as Mukothima "A" adjudication section Gikingo Location, P/No. 150 pending hearing and determination of this suit.

4. That a mandatory injunction be issued against the respondents compelling them to restore the land to the same condition it was before the trespass and/or encroachment, pull down any building and/or structure erected on the land and/or cart way building materials deposited on the suit property at their costs and/or in the alternative reimburse the applicant for expenses incurred to restore the land in the same state it was before the encroachment and/or trespass (sic) pull down any building or carting away building materials deposited on the suit property.

5. That an order directing the OCS Gatunga Police Station to assist and cooperate in service and enforcement of the orders of this honourable court.

6. That this honourable court grants any other order it deems fit.

7. That costs of this application be awarded to the applicant.

3. The application has the following grounds:

1. That the applicant owns the parcel of land known as Mukothima "A" Adjudication Section Gikingo Location P/No. 150 and has occupied the said property from 1978 to date.
2. That the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> respondents on or about August, 2018 encroached, trespassed, cut down trees, deposited building materials and dug trenches on the said parcel of land/property.
3. That the applicant approached the said respondents and set out a complaint and demanded that they immediately desist from encroaching onto his land, but without any right and in blatant disregard of the applicant's right to peaceful enjoyment of his land, the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> respondents have continued to trespass, cut down trees, encroach, deposit building materials, digging of trenches and carrying out construction. The matter was reported to the Land Sub-County Office at Gatunga but there was no relief granted to the applicant.
4. That the applicant came to learn that 5<sup>th</sup> respondent is responsible for the trespass on part of his property by the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> respondents, as the 5<sup>th</sup> respondent has purported to allocate the said respondents the applicant's property and has gone ahead and sub-divided the said property into several portions.
5. That the 5<sup>th</sup> respondent has deemed to purportedly allocate the sub-divided properties to the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents as follows:-
  - a) Samuel Nkari – Plot No. 51a
  - b) Samuel Kathiga – Plot No. 51b
  - c) Daniel Mugao – Plot No. 86
  - d) Franics Ruteere – Plot No. 49
  - e) Unknown person – Plot No. 87
6. That the applicant is apprehensive that the respondents are in the process of dispossessing him, alienating, disposing and/or leasing the subject parcel of and to third parties which will jeopardize the applicant's rights and/or interests thereby causing irreparable loss and damage.
7. That the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> respondents have continued to trespass, cut down trees, encroach, deposit building materials, digging of trenches and carryout construction on the suit property thereby changing the state of the land causing the applicant irreparable loss and damages.
8. That the applicant stands to suffer irreparable loss and damage if the orders sought are not granted.
9. That the applicant cannot be adequately compensated for his loss by way of damages.
10. That it is in the interest of justice that the court issues the said orders pending the hearing and determination of this matter.
11. That the respondents will not suffer any prejudice if this application is allowed.

4. The application is supported by the affidavit of William Mutuura Kairiba, sworn on 19<sup>th</sup> June 2019 which states:

I, WILLIAM MUTUURA KAIRIBA, a male adult of sound mind residing and working for gain in Tharaka Nithi County, within the Republic of Kenya and of P. O. Box 112-60215, Marimanti do hereby make oath and state as follows:

1. That I am the applicant herein fully conversant with the matters giving rise to this suit and therefore, competent to swear this affidavit.
2. That I am the absolute proprietor and/or legal owner of all that parcel of land known as Mukothima "A" Adjudication Section Gikingo Location, P/No. 150.
3. That I was allocated the land known as Mukothima "A" Adjudication Section Gikingo Location, P/No. 150 following adjudication and demarcation process within Mukothima "A" Adjudication Section.

(Attached herewith and marked "WMK1" is a copy of notice issued pursuant to section 5 of the Land Adjudication Act, Chapter 284 of the Laws of Kenya from the Ministry of Lands and Settlement, District Land Adjudication /Settlement, Tharaka Nithi District dated 28<sup>th</sup> May, 1996 showing the length and breadth of Mukothima "A" Adjudication Section of Gikingo Location, Tharaka North Division, Tharaka Nithi District.

4. That the adjudication and demarcation of the land in favour of myself was not challenged either by the respondents or any other person through the mechanism provided for under the Land Adjudication Act, Chapter 284 of the Laws of Kenya resulting in the adjudication and demarcation of the parcel of land known as Mukothima "A" Adjudication Section Gikingo Location, P/No. 150 in my favour.

(Attached herewith and marked "WMK2" is a copy of notice from the Land Adjudication Officer and demarcation confirming completion of adjudication and my land to have become on or about 12<sup>th</sup> February, 2001).

5. That I started occupying the land sometime in year 1978 and continued in quiet and peaceful occupation and use of the land and upon confirmation of adjudication and demarcation I was allocated the land and continued in quiet and peaceful occupation and use of the land until August, 2018.

6. That on or about August, 2018, I noticed that there were persons unknown to me who were illegally, unlawfully unfairly and without any colour of right encroaching and/or trespassing onto my parcel of land known as Mukothima "A" Adjudication Section Gikingo Location, P/No. 150 by delivering building materials, cutting down trees, digging trenches and carrying out construction on the said parcel of land.

7. That the respondents jointly and severally identified themselves to me as the persons who had entered onto the land but failed, refused and/or neglected to avail any documents to justify their illegal, unlawful and/or unfair entry, trespass and/or encroachment into the subject parcel of land.

8. That the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> respondents unlawfully, and without any colour of right entered my parcel of land known as Mukothima "A" Adjudication Section Gikingo Location, P.No. 150 without my consent or at all.

9. That the respondents either by themselves, their agents and/or their employees refused, failed and/or neglected to justify why they entered into my parcel of land known as Mukothima "A" Adjudication Section Gikingo Location, P/No. 150.

10. That upon trespassing onto the subject parcel of land, the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> respondents unlawfully, illegally and without any colour of right cut down trees which I had planted and/or cultivated.

11. That the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> respondents also dug foundation trenches, delivered construction materials and started construction on the subject parcel of land without seeking my consent or at all.

12. That the respondents have continued to trespass and/or encroach on my parcel of land which trespasses has (sic) caused and/or is causing me irreparable loss and damages.

(Attached herewith and marked "WMK3" (a)-(e) are copies of pictures showing encroachment by respondents).

13. That the applicant came to learn that 5<sup>th</sup> respondent is responsible for the trespass on part of his property by the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> respondents, as the 5<sup>th</sup> respondent has purported to allocate the said respondents the applicant's property and has gone ahead and sub-divided the said property into several portions.

14. That the 5<sup>th</sup> respondent has deemed to purportedly allocate the sub-divided properties to the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> respondents as follows:-

- a) Samuel Nkari – Plot No. 51a
- b) Samuel Kathiga – Plot No. 51b
- c) Daniel Mugao – Plot No. 86
- d) Franics Ruteere – Plot No. 49
- e) Unknown person – Plot No. 87

15. That despite sending the 5<sup>th</sup> Respondent notice to desist from further illegal allocation the same has persisted to date.

(Attached herewith and marked "WMK4" is a copy of the letter dated 6<sup>th</sup> September, 2018).

16. That attempts to resolve the conflict at the area Land Sub-County Offices at Gatunga have been futile and the respondents have continued to construct on my land and violate my right to access, occupy and use the subject parcel of land despite the fact that I gave them documents confirming that I was the *bonafide* owner of the property.

17. That I went to seek further assistance from the Land Adjudication office at Marimanti after my attempts to get reprieve at the Land Sub County Offices at Gatunga proved futile.

(Attached herewith and marked "WMK5" is the copy of the consent to sue from the Land Adjudication Office dated 3<sup>rd</sup> June, 2019.

18. That I am apprehensive that respondents are in the process of disposing, alienating and/or leasing the subject parcel of land to third parties and develop which will jeopardize my rights and/or interests thereby causing me irreparable loss and damages.

19. That I am apprehensive that respondents are in the process of dispossessing me, alienating disposing and/or leasing the subject parcel of land to third parties which will jeopardize my rights and/or interests thereby causing me irreparable loss and damages which illegal, unlawful and unjustifiable actions of trespass and/or encroachment can only be stopped by orders of this honourable court.

20. That I swear this affidavit in support of the application filed herewith.

21. That what is deponed hereinabove is true to the best of my knowledge and understanding, save as to information and belief sources of which I have disclosed herein above.

5. At the exparte stage the applicant's advocate, told the court that he solely relied on the grounds on the face of the Notice of Motion and on the applicant's supporting affidavit sworn on 19<sup>th</sup> June, 2019.

6. I have perused the apposite pleadings and I do find that at this exparte stage, the application evinces some merit.

7. I issue the following orders:

- a) The application is not certified urgent BUT will be heard on priority basis.
- b) Prayers 2 and 5 are granted pending hearing and determination of this application.
- c) Application and the orders issued by the court today to be properly served upon the respondents within 5 days of today.
- d) Costs of this application shall be in the cause.
- e) Interpartes hearing on **9.7.2019**

**Delivered in open Court at Chuka this 25<sup>th</sup> day of June, 2019** in the presence of:

CA: Ndegwa

Nyabuti for the Applicant

**P. M. NJOROGI,**

**JUDGE.**