



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT CHUKA

CHUKA ELC CASE NO. 12 OF 2019

PETER KAARIA.....1ST PLAINTIFF

FREDRICK GITONGA MATI.....2ND PLAINTIFF

VERSUS

ABERT MUSYOKA MURIUNGI.....DEFENDANT

RULING

1. This application is dated 20th June, 2019 and is brought to court under sections 1, 1A, 1B, 3 and 3A of the Civil Procedure Act and Order 40 Rules 1 and 2 and Order 51 Rule 1 of the Civil Procedure Rules and all other enabling provisions of the law.

2. The application seeks the following orders:

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

2. That this honourable court be pleased to issue an injunction restraining the defendant by himself, his agents, employees, relatives and/or anybody else acting on his behalf from entering, remaining on, building, cultivating and/or anyhow else however interfering with the plaintiff's quiet possession, occupation, user and/or enjoyment of Land Parcel No. LR. Meru South/Kamwimbi "A"/2174 until this application is heard and determined.

3. That this honourable court be pleased to issue a temporary injunction restraining the defendant by himself, his agents, employees, relatives and/ or anybody else acting on his behalf from entering, remaining on, building, or blocking the public road of access leading to the LR. Meru South/Kamwimbi "A"/2174.

4. That the OCS Chuka Police Station be directed to provide security for the forcible removal of structure/house on the disputed land.

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

3. The application has the following grounds:

i. The 1st plaintiff is the sole proprietor of LR. Meru South/Kamwimbi "A"/2174

ii. The nuisance/trespass infringes article 40(1) of the Constitution of Kenya.

4. The application is supported by the affidavit of Fredrick Gitonga Mati, the 2nd defendant which states"

I FREDRICK GITONGA MATI of P. O. Box 279 Chuka in Tharaka Nithi County in the Republic of Kenya do hereby make oath and solemnly swear as follows:

1. That I am the 2nd plaintiff herein hence competent to make this oath.

2. That I have the authority of the 1st plaintiff to make this oath on his own behalf and on my own behalf.

3. That the, 1st applicant Peter Kaaria is the registered owner of all that piece of land known as Meru South/Kamwimbi "A"/1274 (herein "the disputed land) and annexed and marked "FGM 1" is a copy of the title of the disputed land).

4. That I and the 1st applicant live on the disputed land.

5. That the respondent/defendant wrongfully and maliciously entered into a portion of the disputed land and started erecting a stone house on the disputed land.

6. That the structure on the disputed land erected (sic) by the respondent who has also blocked the public road of access used by myself and the 1st applicant.

7. That unless the respondent (sic) structure is forcibly removed and the structure demolished by an order of this court the applicants will suffer irreparable loss and damage.

8. That the structure erected by the respondent has left the applicants with no reasonable exit from their land as the structure on the road has also blocked access to LR Meru South/Kamwimbi "A"/2170 owned by the 2nd applicant.

9. That all what is deponed to herein is true to the best of my knowledge, information and belief.

5. During interpartes hearing, Mr. Mutani, the applicant's advocate, told the court that he was abandoning prayer 2 as he had no problem with the defendant entering the suit land as he had other structures thereon. He urged the court to grant prayer 3 in the following amended form:

"This honourable court be pleased to issue a temporary injunction restraining the defendant by himself, his agents, employees, relatives and/or anybody else acting on his behalf from constructing a building or blocking the public road of access leading to L.R. No. Meru/South/Kamwimbi "A"/2174."

6. The following orders are granted:

1. Application is **NOT** certified urgent but it is to be heard on priority basis.

2. Prayer 3 is granted in the following amended form: "This honourable court be pleased to issue a temporary injunction restraining the defendant by himself, employees, relatives and/ or anybody else acting on his behalf from constructing a building or blocking the public road of access leading to L.R. NO. Meru South/Kamwimbi "A"/2174".

3. The application is to be properly served upon the defendant within the legally stipulated time before interpartes hearing of the application.

4. The OCS, Chuka Police Station, is directed to ensure that constructing of the building in dispute and any blockage of the public road of access leading to L.R. No. Meru South/Kambimbi "A"/2174 is (are) stopped.

5. Interpartes hearing on **3.7.2019**

Delivered in open court at Chuka this 24th day of June, 2019 in the presence of:

CA: Ndegwa

Mutani for the plaintiffs

P.M. NJOROGE

JUDGE