



**REPUBLIC OF KENYA**

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

**CHUKA ELC MISC. CASE NO. 07 OF 2018**

KANGA MWIRABUA.....1<sup>ST</sup> PLAINTIFF/APPLICANT  
MBIUKI MWIRABUA.....2<sup>ND</sup> PLAINTIFF/APPLICANT  
CIAMBERE KANGANGI.....3<sup>RD</sup> PLAINTIFF/APPLICANT  
CIAMUI KANGANGI.....4<sup>TH</sup> PLAINTIFF/APPLICANT  
JOHN MUTEGI KANGANGI.....5<sup>TH</sup> PLAINTIFF/APPLICANT  
KABURU KANGANGI.....6<sup>TH</sup> PLAINTIFF/APPLICANT  
KAARI KANGANGI.....7<sup>TH</sup> PLAINTIFF/APPLICANT  
CIAMBAKA KANGANGI.....8<sup>TH</sup> PLAINTIFF/APPLICANT  
NYAGA MPUNGU.....9<sup>TH</sup> PLAINTIFF/APPLICANT  
KAGENDO CIAMBAKA.....10<sup>TH</sup> PLAINTIFF/APPLICANT  
KITHINJI KABURU.....11<sup>TH</sup> PLAINTIFF/APPLICANT  
MUTHONI MUTEGLI.....12<sup>TH</sup> PLAINTIFF/APPLICANT

**VERSUS**

**NDEREBA NAICHU.....DEFENDANT/RESPONDENT**

**RULING**

1. This ruling concerns an application brought to court by the applicant and which states that it is premised upon section 18(1)(b) of the Civil Procedure Act and any other enabling provision of the law.
2. The application is dated 21<sup>st</sup> November, 2019 and seeks the following orders:
  1. That this honourable court be pleased to withdraw civil suits numbers Chuka C.M.C.C. Environment and Land no. 47 of 2018 and No. 166 of 2017 with a view to consolidate, try and dispose of the same.
  2. That cost of this application be costs in the cause.
3. The application has the following grounds:-
  1. That by dint of section 38 of the Limitation of Actions Act, Cap.22 Laws of Kenya the Chief Magistrate lacks jurisdiction to hear and determine the two suits which subject matter is anchored on adverse possession to land pursuant to section 37(1) of the Limitation of Action Act, Cap 22 Laws of Kenya.

2. That civil suit number Chuka C.M.C.C. No.47 of 2018 was initially filed in the High Court at Meru as Environment and Land Case No. 83 of 2010 (OS).

3. That the suit was transferred from Meru to Chuka on territorial jurisdiction grounds.

4. That when the file was received at the Chuka Law Court Civil registry, the C.E.O. allocated the same to the chief magistrate instead of allocating it to the High Court, Environment and land division.

5. That the claim for adverse possession in C.M.C.C. (E&L) No. 47 of 2018 is the same to the counter claim of C.M.C.C. No. 166 of 2017 which is land title No. KARINGANI/MARIANI/395.

6. That for convenience sake and expeditions (sic) disposal of the two cases it would be quite in order to withdraw the two matters from the Chief Magistrate in Chuka to the Chuka High Court E & L division.

7. That no one would suffer any prejudice or hardship for the consolidation of the two cases.

4. The application is supported by the Supporting Affidavit of MBIUKI MWIRABUA which states as follows:

1. That I am the 2<sup>nd</sup> applicant in this application.

2. That I have the authority and mandate of my co-applicants to make this affidavit on their behalf and on my own behalf. A copy of that authority is attached and marked "MM1"

3. That I am well versed with all matters concerning the two (2) cases pending before the Chief Magistrate's court in Chuka, to wit Chuka C.M.C.C. No. 166 of 2017 and E & L No. 47 of 2016 (OS).

4. That the two cases are both anchored on occupation of land title number Karingani/Mariani/395. A copy of the green card for the said land is attached and marked "MM2".

5. That all the applicants herein are claiming adverse possession of the suit land while the respondent is claiming ownership or proprietorship of the same.

6. That there would be no prejudice caused to any party and such consolidation would be for the best interest of the justice, time and costs saving.

7. That consolidation of the two suits named herein is necessary for the purpose of achieving the overriding objective of the Civil Procedure Act, that is, for expeditions (sic) and proportionate disposal of the dispute herein.

8. That what is deposed herein is true to the best of my knowledge, information and belief.

5. During directions on 19<sup>th</sup> June, 2019, the following directions were given:

a) By consent, the hearing scheduled for 26.6.2019 for Chuka ELC 166 OF 2017 in the CM's Court be deferred pending hearing and determination of this application.

b) By consent, directions on 4.7.2019

6. It is so ordered.

**Delivered in open Court at Chuka this 19<sup>th</sup> day of June, 2019**

in the presence of:

CA: Ndegwa

Riungu for the applicants

Kaumbi for the respondents

**P. M. NJOROGE**

**JUDGE**