



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT CHUKA

CHUKA ELC CASE NO. 210 OF 2017

FORMERLY MERU ELC. 246 OF 2016

M'CHABARI KINORO.....PLAINTIFF

VERSUS

ISAIAH NKOROI MURIUNGI.....1ST DEFENDANT

JEREMIAH NYAGA MURIUNGI.....2ND DEFENDANT

JACOB GITONGA MURIUNGI.....3RD DEFENDANT

ELIVASE MUTEGI KAJIETA.....4TH DEFENDANT

THE DISTRICT LAND REGISTRAR THARAKA SOUTH.....5TH DEFENDANT

THE HONOURABLE ATTORNEY GENERAL.....6TH DEFENDANT

RULING

1. This application is dated **24th July, 2019** and was filed on **29th July, 2019** and states that it has been brought to court under sections 3 and 3A of the Civil Procedure Act, Order 9 Rules 9 and 10 and Order 51 Rule 1 of the Civil Procedure Rules and all other enabling provisions of the law. It seeks the following orders:

1. That the honourable court be pleased to certify the instant application to be of utmost urgency and service of the same be dispensed with in the first instance and the court be pleased to issue prayer 2 and 3 herein.
2. That this honourable court be pleased to allow Messrs Muthomi Gitari & Co. advocates to come on record for the 1st, 3rd and 4th defendants herein in place of Murango Mwenda and Co. Advocates after judgment has been delivered.
3. That the court be pleased to lift the warrant of arrest issued against the 1st, 3rd and 4th defendants herein on 11th July, 2019 pending the hearing and determination of this application.
4. Costs of this application be provided for.

2. The application has the following grounds:-

- a) That judgment in this matter was delivered on 21st February, 2018 by the honourable court at Chuka.
- b) That the firm of Murango Mwenda and Co. Advocates were on record for the 1st, 3rd and 4th defendant/applicant and the 2nd defendant during the proceedings of this matter.
- c) That after the delivery of judgment the 1st, 3rd and 4th defendant/applicants now wishes (sic) to be represented by the firm of Muthomi Gitari & Co. advocates.
- d) That the 1st, 3rd and 4th defendants/applicants were never neither informed about the taxation or the bill of cost nor the notice to show cause by their advocates on record or by the plaintiff/respondent advocates.

e) The applicants have never been served with any court documents after delivery of the judgment in this cause by any process server and any claim to the contrary is mere falsehoods and the aid process server should be summoned to this court to shed light on the same.

f) That the 1st, 3rd and 4th defendants/applicants only came to know about the notice to show cause after they heard rumours that they were being pursued by police officers from Marimanti police station after a warrant of arrest was issued against them.

g) That the 2nd defendant went missing sometimes in May, 2015 and his whereabouts are unknown hence James Kamau Thuo the process server should be summoned to this court to explain how he served the 2nd defendant and 1st, 3rd and 4th defendants/applicants.

h) That it is only fair and just if warrants of arrest against the 1st, 3rd and 4th defendants/applicants are lifted by this honourable court.

i) The 1st, 3rd and 4th defendants/applicants are lay men who do not know the court process and who after the delivery of the judgment were not advised any longer by their former advocate on record.

j) That the 1st, 3rd and 4th defendants/applicants are people who are able to sign and/or acknowledge receipt of any service upon them.

k) The 1st, 3rd and 4th defendants/applicants are citizens who know the consequences of ignoring court summons.

l) That it is in the interest of justice and fairness that the orders sought be granted.

m) That orders sought are the best and most apt in the circumstances.

3. The application is supported by the affidavit of **ELIVASE MUTEGI KAJIETA** sworn on **24th July 2019** which states:-

I ELIVASE MUTEGI KAJIETA of P. O. Box KATHWANA in the Republic of Kenya make oath and state as follows;

1. That I am male adult of sound mind, the 4th defendant herein, duly authorized by the 1st and 3rd defendant to make oath and state as follows:
2. That judgment in this matter was delivered on 21st February, 2018 by this honourable court at Chuka.
3. That the firm of Murango Mwenda and co. advocates was on record during the proceedings of this matter.
4. That after the delivery of judgment I now wish to be represented by the firm of Muthomi Gitari & Co advocates.
5. That I was never served with a taxed bill of cost or a notice to show cause after it was issued by the honourable court.
6. That I only came to know that I was a wanted man after I heard rumours that I was being pursued by police officers from Marimanti police station to be apprehended for alleged non-attendance of court.
7. That it is in my knowledge that the 2nd defendant went missing sometimes in May, 2015 and his whereabouts are unknown since that time hence James Kamau Thuo the process server should be summoned to this court to explain how he served the 2nd defendants and 1st, 3rd and 4th defendants/applicants.
8. That it is only fair and just if the warrant of arrest against me are lifted by this honourable court.
9. That I am a layman who does not know the court process and after the delivery of the judgment I was not advised further by my former advocate on record.
10. That I am a Kenyan citizen who knows the consequences of ignoring court summons.
11. That all what is deponed to herein above is true to the best of my knowledge and belief save to information whose sources have been disclosed.

4. At the exparte stage, Mr. Gitari, representing the applicants told the court that there was utmost urgency in this matter in that a warrant of arrest had been issued on **11th July, 2019** against the 1st, 2nd, 3rd and 4th defendants. He asked the court to grant prayers 1, 2 and 3 in the application.

5. Inter alia, the applicants have cited **Order 9 Rules 9 and 10 of the Civil Procedure Rules** as some of the provisions of the law they were relying upon.

6. Rules 9 and 10 of Order 9 of the Civil Procedure Rules are reproduced herebelow:

a) Change to be effected by order of court or consent of parties [order 9, rule 9]

When there is a change of advocate, or when a party decides to act in person having previously engaged an advocate, after judgment has been passed, such change or intention to act in person shall not be effected without an order of the court-

(a) upon an application with notice to all the parties; or

(b) upon a consent filed between the outgoing advocate and the proposed incoming advocate or party intending to act in person as the case may be.

b) Procedure [Order 9, rule 10.]

An application under rule 9 may be combined with other prayers provided the question of change of advocate or party intending to act in person shall be determined first.

7. Contrary to the requirement prescribed by order **9 Rule 9(a)** of the Civil Procedure Rules there is no affidavit of service showing that notice has been given to all parties. There is also no evidence of the existence of a consent entered into by the outgoing advocate and the incoming advocate. It is also obvious that prayer 3 in the application cannot be entertained by this court unless Order **9 Rule 9** of the Civil Procedure Rules is complied with.

8. In the circumstances, prayers 1, 2 and 3 are denied in view of the fact that the application is not in consonance with the applicable provisions of the law.

9. In the overriding interest of justice and in consonance with section 3A of the Civil Procedure Act, I do note that the advocate representing the 1st, 3rd and 4th defendants has told the court that his clients are ready to present themselves in court whenever they are called upon to do so. He has also told the court that they are willing to satisfy the bill of costs AND I, therefore, issue the following orders:

a) The warrant of arrest issued against the 1st, 3rd and 4th defendants on 11th July, 2019 is hereby lifted on condition that they will attend court whenever they are called upon to do so and that they will satisfy the bill of costs within 30 days of today or within such other period as may be ordered by The Deputy Registrar/Court.

b) No order as to costs is issued.

c) This application is deemed heard and determined.

Delivered in open Court at Chuka this 31st day of July, 2019

in the presence of:

CA: Ndegwa

Muthomi Gitari present for 1st, 3rd and 4th defendants

P. M. NJOROGE,

JUDGE.