



**REPUBLIC OF KENYA**

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

**CHUKA ELC CASE NO. 12 OF 2019**

**PETER KAARIA.....1<sup>ST</sup> PLAINTIFF**

**FREDRICK GITONGA MATI.....2<sup>ND</sup> PLAINTIFF**

**VERSUS**

**ALBERT MUSYOKA MURIUNGI.....DEFENDANT**

**RULING**

1. This application is dated **20<sup>th</sup> 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 1<sup>st</sup> 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 2<sup>nd</sup> 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 2<sup>nd</sup> plaintiff herein hence competent to make this oath.
2. That I have the authority of the 1<sup>st</sup> plaintiff to make this oath on his own behalf and on my own behalf.
3. That the, 1<sup>st</sup> 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 1<sup>st</sup> 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 1<sup>st</sup> 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 2<sup>nd</sup> applicant.
9. That all what is deponed to herein is true to the best of my knowledge, information and belief.

5. It is noted that at paragraph 5 of its ruling delivered on **24<sup>th</sup> day of June, 2019**, this court inadvertently and incorrectly called the hearing at that stage "interpartes" whereas it was "exparte". This mistake is genuinely regretted.

6. Prayer 2 is spent.

7. The **application was heard** interpartes on **10<sup>th</sup> July, 2019**.

8. **Advocate P. M. Mutani**, for the applicant informed the court that orders that were issued on **24<sup>th</sup> June, 2019** were complied with, although there was some resistance. He told the court that he relied on the supporting affidavit sworn by the 2<sup>nd</sup> plaintiff on **20<sup>th</sup> June, 2019**. He told the court that the respondent lived on an unregistered parcel of land he described as **Kamwimbi A/1832**. He claimed that the complainant had trespassed on Land Parcel No. **Meru South/Kamwimbi "A"/2174** which belonged to the 1<sup>st</sup> plaintiff and had embarked on the construction of a structure thereon. He also told the court that the defendant had also blocked a road of access. He asked the court to grant prayer 2 so that the offending construction could be stopped.

9. Advocate I.C. Mugo for the respondent, opposed the application. He was categorical that **the impugned construction was on parcel No. Kamwimbi A 1832**. He told the court that the respondent had lived on his land from time immemorial. He denied that any access road had been blocked. He asked the court to disallow the application and said that should eventually the respondent be found culpable, he at that time should be evicted.

10. Mr. Mutani responded that the boundaries for parcel No. Kamwimbi A 1832 could not be established, the land being unregistered. He asked the court to allow the application so that the issues could be properly canvassed. He was insistent that the applicant knew the boundaries of his land which were shown to him before his land was registered in his name. He produced a copy of title of parcel No. Meru South/Kamwimbi 'A'/2174 as proof of the plaintiff's ownership of the suit land.

11. Having heard both parties, I find that the application has merit and should be allowed. In the circumstances, the following orders are issued:

- a) Prayer 3 as amended is granted in the following form: "An injunction is hereby issued 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** **PENDING** hearing and determination of this suit.
- b) The OCS, Chuka Police Station, is directed to **ensure that construction** of the **building** in dispute and **any blockage** of the **public road of access** leading to L.R. No. **Meru South /Kamwimbi "A"/2174 is (are) stopped**.
- c) The plaintiff is directed to fully **comply with Order 11, CPR, within 14** days of today **AND** the defendant is directed to do so within 14 days after the period granted to the plaintiff.
- d) Parties will come to court for **directions** concerning a **hearing date on 25<sup>th</sup> September, 2019**.
- e) Costs shall be in the cause.

Delivered in open court at Chuka this **31<sup>st</sup> day of July, 2019** in the presence of:

CA: Ndegwa

Mutani for the Applicant/Plaintiff

Albert Musyoka Muriungi - defendant

**P.M. NJORGE**

JUDGE