



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT EMBU

CIVIL CASE NO. 71A OF 2014(OS)

(FORMERLY KERUGOYA ELC NO. 47 OF 2012 (OS))

FORMERLY EMBU HIGH COURT CIVIL CASE NO. 36 OF 2007 (OS)

IN THE MATTER OF THE REGISTRATION OF LAND ACT 2012

AND

IN THE MATTER OF PARCELS OF LAND

MBEERE/MBITA/2088, 2089, 2090, 2094, 2171, 2200, 2204, 2205, 2298, 3775 AND 3777

FAUSTINO NJERU NJOKA.....1ST APPLICANT

FRANCIS NJERU NYAGA.....2ND APPLICANT

VERSUS

1. RUGANO NTHIGA..... 1ST RESPONDENT

2. MWIRECA KIARIRWA.....2ND RESPONDENT

3. NJOKA KONJI.....3RD RESPONDENT

4. NJERU NGICUVA.....4TH RESPONDENT

5. MUGO NYAGA NJERU.....5TH RESPONDENT

6. JUSTUS NJERU NGIRIGACHA.....6TH RESPONDENT

7. SILAS NJIRU NYAGA.....7TH RESPONDENT

8. NJUE MUCENDU NGICUVA.....8TH RESPONDENT

9. GIBSON NJUE NGIRAGACHA.....9TH RESPONDENT

10. JOHN MATI NYAGA.....10TH RESPONDENT

11. JUSTUS NJUKI NYAGA.....11TH RESPONDENT

12. BENJAMIN KITHUMBU KAMBELO.....12TH RESPONDENT

13. PHEANAS KAGANE.....13TH RESPONDENT

14. MUTURI PHENES KAGANE.....14TH RESPONDENT

15. TITUS NJERU KAGANE.....15TH RESPONDENT

16. NYAGA NGINYIRO..... 16TH RESPONDENT

EVANS MATHERI IGOGO (LEGAL REPRESENTATIVE OF

17. STEPHEN IGOGO MATHERI.....17TH RESPONDENT

18. SAMUEL MUTITU NDUMA.....18TH RESPONDENT

19. JOB KIBET T.KIMEY.....19TH RESPONDENT

AND

STEPHENE IGOGO MATHERI.....1ST INTERESTED PARTY

SOSPETER KITHUMBU MURANGIRI....2ND INTERESTED PARTY

KIMUNYE TEA FACTORY CO. LTD.....3RD INTERESTED PARTY

RULING

1. This application is dated 29th July, 2019 and is brought to court under Order 51(1), Order 40 Rule 2 (1), (2), 3(1) and (3) of the Civil Procedure Rules, 2010 and Under Section 1A, 1B, 3A of the Civil Procedure Act, Cap 21 of the Laws of Kenya, And any other enabling provisions of the law.

2. The application seeks the following orders:

1. That this application be certified urgent and service of the same be dispensed with in the first instance.
2. That pending the inter-parties hearing and determination of this application, an injunctive order do issue against the respondents herein whether by themselves, their partners, employees, agents, servants and/or proxies whatsoever, restraining them from selling, leasing, charging, alienating and/or in whatsoever manner dealing with the suit properties.
3. That pending the inter-partes hearing and determination of the main suit, an injunctive order do issue against the respondents herein, whether by themselves, their partners, employees, agents servants and/or proxies whatsoever, restraining them from selling, leasing, charging, alienating and/or in whatsoever manner dealing with the suit properties.
4. That the honourable court be pleased to stay all the proceedings in this suit pending the inter-partes hearing and determination of this application.
5. That the honourable court be pleased to stay all the proceedings in this suit pending the inter-partes hearing and determination of E.L.C. CASE NO. 18 OF 2019 Sospeter Kithumbu Murangiri –vs- Faustino N. Njoka and 4 Others.
6. That the court be pleased to make any other order fit in the circumstances of this case.
7. That costs of this application be provided for.

3. The application has the following grounds:

- a) The 1st and 2nd applicants in this mater are the 1st and 2nd defendants in ELC Case No. 18 of 2019 Sospter Kithumbu Murangiri vs Faustino N. Njoka and 4 Others.
- b) The 2nd Interested Party/Applicant in this matter has at all times been a member of Ikandi clan which he represents in this application and the main suit.
- c) Ikandi clan from which the 2nd Interested Party/Applicant hails, has been the custodian of the subject parcels of land, to wit; Mbeere/Mbita/2088, 2089, 2090, 2094, 2171, 2200, 2204, 2205, 2298, 3775 and 3777 by virtue of their occupation of the said parcels as founded land.
- d) The 1st and 2nd applicants/respondents herein through an amended O.S in this matter dated 2nd February, 2018 did on the face of it omit other parcels of land that were included in the initial O.S dated 7th March, 2007 whose ownership has not been litigated upon for proper determination, to wit; parcels of land No. Mbeere/Mbita/2087, 2092, 2119, 2169, 2184, 2185, 2282, 2548, 2571, 3771, 3773, 3774, 3776, 3778, 3779, 3780, 3781 and 3782.

e) The 2nd Interested Party/Applicant has now filed a suit before this honourable court, suit number E.L.C. Case NO. 18 of 2019 Sospeter Kithumbu Murangiri –vs – Faustino N. Njoka and 4 Others.

f) The above mentioned suit number E.L.C. Case no. 18 of 2019 Sospter Kithumbu Murangiri vs Faustino N. Njoka and 4 Others has included all the parcels of land in the amended O.S. by the 1st and 2nd applicants/respondents herein and the omitted parcels of land that were in the initial O.S. dated 7th March, 2007.

g) In light of the foregoing, the 2nd Interested party/applicant is seeking that the honourable court be pleased to stay the proceedings in this suit pending the hearing and determination of suit number E.L.C. Case no. 18 OF 2019 Sospter Kithumbu Murangiri vs Faustino N.Njoka and 4 Others.

h) That indeed, this matter has a ruling on the admission of the amended O.S on 26th September, 2019. If the same is allowed, then it would mean that the instant suit will proceed simultaneously with the suit number E.L.C. No. 18 of 2019 Sospeter Kithumbu Murangiri vs Faustino N. Njoka and 4 Others.

i) The 2nd Interested Party/Applicant is now apprehensive that if the proceedings in this matter are not stayed, the honourable court will be subjected to issuing two conflicting decisions over the same subject matter.

j) Equally, the 2nd interested party/applicant is also apprehensive that if the proceedings in this mater are not stayed, the honourable court will be subjected to issuing two conflicting decisions over the same subject matter whose determination would be best if dealt with holistically under suit number E.L.C case no. 18 of 2019 Sospter Kithumbu Murangiri vs Faustino N. Njoka and 4 Others.

k) Most of the suit properties in this suit have been subjected to mutation. The 1st and 2nd applicants/respondents have taken advantage of this fact as an avenue to duplicate matters leading to a multiplicity of suits.

l) If the instant application is not allowed, there is a real and great risk of this honourable court issuing two overlapping decisions on the same subject matter.

m) It is the interest of justice that the 2nd interested party is seeking for a stay of proceedings in this suit pending the hearing and determination of E.L.C.Case no. 18 of 2019 Sospeter Kithumbu Murangiri –vs – Faustino N. Njoka and 4 Others.

n) There is no prejudice that will be visited upon the respondents herein should this honourable court issue interim orders in the intervening period pending the inter-parties hearing of this application and the hearing and determination of E.L.C Case no. 18 of 2019 Sospeter Kithumbu Murangiri vs Faustino N. Njoka and 4 Others.

4. The application is supported by the affidavit of Sospter Kithumbu Murangiri, the 2nd Interested Party.

5. During exparte hearing of the application on 30th July, 2019, Mr. Kamundia told the court that there was need to grant prayers 2 and 4 as the intended ruling concerning Embu ELC 71A (OS) of 2014 had the potentiality of conflict with decisions to be made in ELC 18 of 2019. He told the court that granting of the sought orders would achieve two goals: (a) protection of the suit property and, (b) protecting the integrity of the court. He asked the court to grant the apposite orders.

6. I have considered the pleadings proffered to court. I have also considered the oral submissions made by the applicant's advocate. I find that hearing of the application expeditiously will achieve the results intended by the applicant. Consequently, I issue the following orders:

a) This application is NOT certified urgent but will be heard on priority basis.

b) This application be served upon the other parties within 5 days of today.

c) This application be heard interpartes or direction be given by Hon. Angima, ELC Judge at Embu on **12th August, 2019**, over a month before the scheduled ruling in ELC 71A(OS) of 2014.

d) Costs shall be in the cause.

Delivered in open Court at Chuka this 30th day of July, 2019 in the presence of:

CA; Ndegwa

Kamundia for the Applicant

P.M. NJOROGE

JUDGE