



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT CHUKA

CHUKA ELC CASE NO. 306 OF 2017

GINSON KIRAGU MBERIA alias GINSON KIRAGU NJAGI.....PLAINTIFF

VERSUS

STANLEY BUNDI RIMBERIA.....1STDEFENDANT

KARANI JOHN RIMBERIA (sued as the legal representative of the estate of

Rimberia Kanyi alias Rimberia Kanya (deceased)).....2ND DEFENDANT

RULING

1. The applicant states that he has brought this application to court under Rule 5(2), b of the Court of Appeal Rules, Article 10(2)b and Article 159(2) a, b and d of the Constitution of Kenya. The application seeks the following orders:

1. That this matter be certified as extremely urgent, service of this application be dispensed with and matter be admitted for hearing in the very first instance.
2. That this honourable court be pleased to grant orders for stay of execution of the judgment of Hon. P. M. Njoroge of 29th May, 2019 pending the inter-parties hearing of this application.
3. That this honourable court be pleased to grant orders of stay of execution of the judgment of Hon. P. M. Njoroge of 29th May, 2019 pending the hearing and determination of the intended appeal.
4. That the honourable court be pleased to issue inhibition orders against Land Parcel No. Mwimbi/Murugi/180 pending the hearing and determination of this application inter-parties.
5. That the honourable court be pleased to issue inhibition orders against Land Parcel No. Mwimbi/Murugi/180 pending the hearing and determination of the intended appeal.
6. Any other order that this honourable court can grant or shall find to suffice in the interest of justice.
7. That the costs of this application be provided for.

2. The application has the following grounds:

- a. That this matter was heard on 22nd October, 2018 where both parties were heard and case was closed for confirmation of written submissions on 31st October, 2018 when the same was fixed for mention to confirm written submissions.
- b. That on 31st October, 2018 both parties had filed their written submissions and the court gave a date for judgment for 19th December, 2018.
- c. That however on 31st October, 2018, the judgment was not read, but instead the honourable court adjourned the matter sue moto to have the same mentioned for directions on 25th March, 2019.

d. That on 25th March, 2019, the court gave a judgment date for 29th May, 2019 when the judgment was read and was not in favour of the applicant/appellant.

e. That besides having taken six months to deliver the judgment, the court dismissed the case and issued orders which had not been prayed for by the respondent.

f. That indeed page 19 of the judgment paragraph 36 (c) the judge despite having not filed any counterclaim, proceeded to issue an order to evict the applicant (quote verbatim).

“The plaintiff and any persons acting at his behest or remaining on the suit land at his behest should vacate the suit land within three (3) months after delivery of this judgment AND should he not do so, he will be evicted from the suit land AND the Commanding Officer (O.C.S) Chogoria Police Station is directed and empowered to ensure compliance with this order”

g. That this is clear proof that this honourable court was biased against the applicant as it granted orders which had not been requested for by the respondent against the law.

h. That the applicant is apprehensive that even if he files an application for stay of execution before the said court, the court once more shall be biased against him and he shall not get a fair hearing.

i. That the applicant has an arguable case which has a very high possibility of success and urge this court to issue stay of execution to preserve the suit property pending the hearing of the appeal.

j. That unless the stay is granted, the applicant's family shall be rendered destitute and designated homeless as they have lived on this land for more than 40 years and that he was borne on the land.

k. That his application has merit and no person shall be prejudiced if the order for stay is granted pending the hearing and determination of the appeal.

3. The grounds in the application are more or less regurgitated in the affidavit of Ginson Kiragu Mberia Alias Gibson Kiragu Njagi sworn **on 26th August, 2019.**

4. The application was heard interpartes on **4th September, 2019.** M/s Kithaka, holding brief for M/s Kiome, the applicant's advocate, asked the court to issue orders of stay of execution and of inhibition pending determination of this application.

5. M/s Njenga, holding brief for Mr. Mokuu, the defendant's advocate, opposed the application. She reminded the court that judgment was delivered **on 29th May, 2019** to the effect that the plaintiff's case was dismissed and he was to render vacant possession of the suit land within 3 months which period lapsed on **30th August, 2019.**

6. Miss Njenga pointed out that although the plaintiff filed a Notice of Appeal on **6th June, 2019,** he did not take any step towards stay of execution. Miss Njenga proffered that, on his own free will, the plaintiff moved out of the suit land and, therefore, did not wait to be evicted. She told the court that what is left on the suit land is a locked empty house and a church structure both of which the defendant will be seeking for orders of demolition to give effect to the court's judgment.

7. Miss Njenga further told the court that the defendants and their families had since taken possession of the suit land. She posited that an order of stay of execution would amount to the court reversing its own orders. She laconically proffered that the application lacked merit and should be dismissed.

8. Miss Kithaka prayed **for 10 days** to give an opportunity to the plaintiff to respond to the plaintiff's replying affidavit sworn on **3rd September, 2019** and filed on **4th September, 2019.** By consent, the advocates representing the parties agreed to come to court for directions on **18th September, 2019.**

9. On **18th September, 2019,** the plaintiff's advocate, M/s Linda G. Kiome, did not come to court but sent advocate Mwirigi Kaburu to hold her brief. Mr. Mwirigi told the court that the plaintiff's advocate had instructed him to tell the court that the applicant was not interested in pursuing the application.

10. It is not clear, if or if not, by being not further interested in pursuing the application, she was withdrawing the application and all other untrue assertions contained in her pleadings and the egregious accusations she and her client had made against the judge and this court's Court Assistant, Mr. Ndegwa. Was she and her client withdrawing her spurious claim that this court had on **31st October, 2018** given the **19th of December, 2018** as the date of delivery of Judgment? Was she and her client withdrawing the naked lie that this court had taken six months to deliver its judgment?

11. The applicant and her advocate took nearly three months to file this application. Why this was the case can only be open to conjecture. I suspect that this was a contrivance to engage in forum shopping. The applicant and her advocate only introduced this application during the recess and moved to Meru ELC Court where they thought that they would hoodwink the ELC Judge to grant them orders without their disclosing all material facts. The ELC Judge at Meru referred them back to this court.

12. This application was filed on **27th August, 2019** and was initially heard by Lady Justice Lucy Mbugua at Meru on **28th August, 2019** during this court's recess. The applicant was directed to serve the application and the Judge directed that the application be heard by this court on **4th September, 2019**. It is clear that the application came up for hearing over three months after this court's Judgment was delivered on **29th May, 2019** and after the time granted to the plaintiff to vacate the suit land had lapsed.

13. Well before this application was filed, the plaintiff wrote an undated letter to the Honourable the Chief Justice of the Republic of Kenya which letter was filed on **17th July, 2019**. The said letter reads as follows:-

GINSON KIRAGU MBERIA ALIAS

GINSON KIRAGU NJAGI

P. O. BOX 65-60401,

CHOGORIA.

JUNE 2019

CELL: 0721-176-044

THE CHIEF JUSTICE

PRESIDENT OF THE SUPREME COURT

HON. JUSTICE DAVID MARAGA

P. O. BOX 30041-00100,

NAIROBI.

Dear Sir,

RE: PETITION OF THE JUDGMENT OF ELC CASE NO. 306 OF 2017 AT CHUKA BY HON. JUDGE NJOROGE.

I humbly write to you requesting for your attention and action toward my grievances on the reference case presided by E.L.C. Judge Hon. Njoroge on 29th May, 2019 at Chuka Law Courts.

I am intending to file an application of dissatisfaction in the Court of Appeal in Nyeri but as a matter of procedure I have to put an injunction for a stay of judgment in the same court of the Honourable Judge Njoroge. My fear with the judge is that he may dismiss my application or grant a harsh conditional stay to block me from accessing justice from the court of appeal as a way of defeating my rights.

He may also use the opportunity to double-stamp his judgment leaning in favour to my cousin Stanely Bundi and his associates against Article 48 of the Constitution.

The following are the grounds for my suspicion that I would not be granted fair hearing by the Honourable Judge Njoroge at the E.L.C. Court Chuka.

1. There was an application dated 18/04/2018 due to my opponent and associates violence towards myself, family and property during the burial of Stanely Bundi's half-sister. My house was totally damaged. The roof, window panes and doors were damaged. My son's house was torched and burnt into ashes and nothing was salvaged. This was done in broad daylight on 19.03.2018 where photographs were taken and the court accepted them as part of evidence and showing the court the difficulties and trauma I was going through, in connection to the land dispute. The order was granted and peace was realized.

In the honourable Judge Njoroge's judgment he didn't capture anything in that incident, he only noted that I am the one who is violent, shifting the said violence to me as in No. 31 of his judgment.

My opponent and associates said that I live in 7 acres where (sic) in my part statement (sic) claimed I had only 3 acres from the whole land measuring 10.25. I sort (sic) to be granted 3 acres but the judge labeled me as a liar to the opposite of my opponent. To me it means the evidence was slanted in favour of Mr Stanely Bundi to hide some interests.

2. A court order was issued in 1978 to demarcate the 3 acres of land from the 10.25 acres where the decree was effected by the then Registrar of court in Meru for (sic) the defendants and associates were adamant (sic) to surrender the 3 acres. The order was signed by the registrar and my opponent Mr. Stanely Bundi refers to that action (sic) I as a person the one who did it in my own capacity as Ginson Kiragu. The honourable judge accepted this strongly as truth only because my lawyer didn't question the defendant. I feel the final judgment showed there was an element of prejudice for I cannot see any balance in his findings.

3. A Mr. Kinyua Kaburu a nephew to Nr. Stanely Bundi on 26.04.2019 during the mention date of the judgment and also who is accused of damaging my house and torching my son's house on 19.3.2018 tried to intimidate me by asking me where I will get the Kshs.500,000/= to counter them for they have frustrated the land case and they will do the same to the other case in the other court in Chuka case file No. 487/29/18.

I sensed something was going on in the court corridors of the E.L.C. but I have nowhere to go and I waited for the results of which I was told and what I anticipated came true.

4. Mohammed M'iti a half-brother to Stanley Bundi also told me that they knew the courts and I will be surprised and wonder more why I was wasting my time instead of leaving the disputed land before they come for my neck. I have reported this several times at Chogoria police station and I list the O.B I can remember;

1. OB 16/27/10/2018 at Chogoria Police Station

2. OB 17/20/8/2018

I suspect Mohammed knew before the judgment date the outcome of which it came true. My question is do they have a route to access the judge in order to preempt the outcome of the judgment before it is read.

5. A nephew to Mr. Stanely Bundi a Mr. George Kamundi a teacher by profession sold a half acre piece of land between 26th April, 2019 and 15th of May, 2019 to a Mr. Gitonga Kaari. He was seen in the courts on 26th April, 2019 during mention of the case but not seen during judgment date and I believe he was promising money to influence because he seems to be knowing Mr. Ndegwa the court clerk for they both relate well. They talked for few minutes inside the court room when the court was not in progress at 11.00 am.

After their conversation I went to Mr. Ndegwa to ask for the judgment date and he rebuked and shouted at me telling me to check the date at the registry. When leaving he however told me the judgment date will be on 29th May, 2019.

Mr. George Kamundi had never been on (sic) the court even during the hearing or on the judgment day except on 26th April, when he had a brief conversation with Mr. Ndegwa the court clerk.

The behavior of Mr. Ndegwa and George sent signals in my mind that something about the case was being brewed and my suspicion came true on the judgment day between 26th April, 2019 to 25th May, 2019. George sold a piece of land to a Mr. Gitonga Kaari – this money could have influenced the judgment.

6. The court under honourable Judge Njoroge made a decree of eviction which was not sort (sic) by Mr. Stanley Bundi (sic) his advocate in their statement or oral submissions raising suspicion of favourism and biasness and making me suspect of either monetary or external influence.

In my mind I cannot match advance (sic) possession with eviction which was not sort (sic) by either party.

On 27th April, or thereafter Mr. Stanley Bundi and five others visited the disputed land alleging that I had exhumed the body of the half-sister. They met my wife Joyce Mumu Kiragu and interrogated her for about 5 minutes. One of them who introduced himself as a D.C.I Officer from Chogoria police station told her to tell me to report at Chogoria Police Station.

I suspected the intention was to lock me up and when I reported I was accompanied by my lawyer of which they said they had nothing for they saw the grave was not interfered with. This was indeed mental bullying to me before the judgment.

The security I had received from Hon. Njoroge's of inhabitation (sic) orders which he removed before the Succession Case No. 536A of 2009 in Meru Law Courts makes me feel under siege from all direction (sic) with no cover from anywhere. I intend to pursue justice in the other forums of judicial office. I feel the insecurity created by the honourable Judge Njoroge may lead to unexpected (sic). Likely losing my life in unclear circumstances before I pursue my rights in the court of appeal.

7. The above grounds make me to believe that I will not get fair hearing from Hon. Njoroge the E.L.C. Judge at Chuka if I file an application for stay of execution in this same court

I fear the honourable judge will dismiss my application or grant a harsh heavy conditional stay to block me to (sic) access the court of appeal by the measure of my financial ability indicated in my statement.

My prayer to you Mr. President of the Supreme Court are:

1. To investigate the conduct of the Hon. Justice D. M. Njoroge in this matter.

2. To assure me security of myself family and property before the intended application in the court of appeal, during hearing until the conclusion of the case.

Thank you.

Yours faithfully,

GINSON KIRAGU MBERIA

Cell: 0722 796 044

CC:

The Judicial Service Commission

P. O. Box 40048-00100,

Nairobi.

The Judge ELC Chuka High Court

Hon. Njoroge

The Resident Judge Chuka High Court,

Hon. Justice Limo

14. This court notes that the issues raised in this letter and in this application are issues which rightly ought to be canvassed at the court of appeal. I will, therefore, not comment on these issues as doing so is not only veritably not useful but will amount to this court sitting as an appellate court regarding its own findings. I also do not find it necessary to comment on the many falsehoods very generously traded by the plaintiff save for one issue only. This regards the apposite judgment having taken six months to be delivered. This is untrue. This court assiduously delivers its judgments within 60 days of its fixing a date for judgment as required by order 21, Rule 1 of the Civil Procedure Rules. It is a plainly despicable lie that on **31st October, 2018**, this court fixed the date of delivery of the apposite Judgment as **19th December, 2018**.

15. This court notes that it has become rather fashionable for litigants to write letters to the Honourable the Chief Justice and to the Judicial Service Commission regarding matters which should be escalated to the Court of Appeal where they should be canvassed. Some of these letters seek to traduce Judicial Officers with the hope that they would be intimidated. However, no amount of calumny will derail Judges and Judicial Officers from upholding the oath they have taken to do obeisance to the law and to maintain the fidelity of the Judiciary in meting justice to all litigants without fear or favour.

16. I have carefully considered all the pertinent issues. I do note that, even where a court finds a prayer for stay of execution meritorious, Order 42 Rule 6 (2) mandatorily requires that security be proffered as may ultimately be binding on the applicant for the due performance of the apposite decree or order. Although I do not find this application to be meritorious, I note that the applicant has not offered any security.

17. I do agree with Miss Njenga that should the orders sought by the applicant be granted, this would amount to the court reversing its orders and more so because this application comes up after expiry of the three months the plaintiff had been granted within which to vacate the suit land. The plaintiff has not in any way controverted the assertion by Miss Njenga that he had of his own free will vacated the suit land. I do note that in arriving at my judgment which dismissed the apposite suit, the court considered that the suit land was not registered in the name of the 1st defendant as wrongly averred in the plaintiff's Originating Summons. The court also had taken into account that there was a pending succession cause concerning the suit land. This is Meru High Court Succession Case No. 536/2009.

18. In the circumstances:-

- a. I find that this application lacks merit.
- b. This application is hereby dismissed on account of lack of merit and upon intimation of lack of interest to pursue it by the applicant.
- c. Costs of this application are awarded to the defendants.

19. In view of the fact that the plaintiff had complained to the Honourable The Chief Justice and to the Judicial Service Commission, this court directs the Deputy Registrar to send copies of this Ruling to the Honourable The Chief Justice and to the Judicial Service Commission.

20. It is so ordered.

Delivered in open court at Chuka this **18th day of September, 2019** in the presence of:

CA: Ndegwa

Mwirigi Kaburu h/b M/s Linda G. Kiome for the Plaintiff

P.M. NJORGE

JUDGE