



**REPUBLIC OF KENYA**

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

**MERU ELC CASE NO. 55 OF 2019**

**JASON KINYUA RAIBU.....PLAINTIFF**

**VERSUS**

**ESTHER KARAMBU MEME.....DEFENDANT**

**RULING**

1. This application states that it has been brought to court under Section 1A, 1B, 3 & 3A of the Civil Procedure Act, Article 159 of Constitution of Kenya, Order 40 of the Civil Procedure Rules and all other enabling provisions of the law. The application seeks the following orders:

1. That this matter be certified as extremely urgent service be dispensed with and matter be admitted for hearing instantly
2. That this honourable court be pleased to issue temporary orders of injunction restraining the defendant/respondent, her agents, servants, relatives, workers or any other persons claiming through her from evicting his family, selling, subdividing, disposing off, entering by force or in any other way dealing with the property namely land parcel No. 345 Nyayo Settlement Scheme pending the hearing and determination of this application interparte.
3. That this honourable court be pleased to issue temporary orders of injunction restraining the defendant/respondent, her agents, servants, relatives, workers or any other persons claiming through her from evicting his family, selling, subdividing, disposing off, entering by force or in any other way dealing with the property namely Land Parcel No. 345 Nyayo Settlement Scheme pending the hearing and determination of this suit.
4. That this honourable court be pleased to issue orders of inhibition against all registrations and dealings in Land Parcel No. 345 Nyayo Settlement Scheme pending the hearing and determination of suit.
5. That this honourable court do empower the O.C.S Timau Police Station to enforce the orders of this court.
6. That costs for this application be provided for.

2. The application has the following grounds:

- a) That the applicant/plaintiff has been in open, uninterrupted, continuous quiet user and exclusive possession of land P/No.345 Nyayo Settlement Scheme 0.05 Acres thereof.
- b) The applicant took vacant possession of the land and settled therein with his family since 2002. He has extensively developed the land by rearing animals, has extensively cultivated the land by planting nippier grass, maize, beans & Irish potatoes.
- c) That the defendant has never entered the suit property for more than 17 years since he took possession of the same.
- d) That the applicant has extensively developed the land and planted indigenous trees, exotic plants as well as miraa plantation.
- e) That owing to the defendant's recent actions the applicant is at risk of his home being demolished thereby rendering him homeless and destitute.
- f) That unless the orders sought are granted the plaintiff is likely to suffer irreparably if the suit property is disposed.

3. The application is supported by the affidavit of Jason Kinyua Raibu the plaintiff, which states:

**I, JASON KINYUA RAIBU of C/O P.O. Box 2387-60200 Meru** within the Republic of Kenya do hereby make oath and swear as follows:-

1. That I am the applicant in the matter thus competent to make and swear this affidavit.
2. That I entered into a sale of land agreement with Esther Karambu Meme on 12<sup>th</sup> April, 2002 for the sale of 0.5 Acres of land P/No.345 Nyayo Scheme Estate for a consideration of Kshs.30,000/= as seen from annexure “JKR1”
3. That I proceeded to take over the vacant possession of the land and I fully settled the purchase price as shown by annexure “JKR2”.
4. That I also fully commenced the development of the land by constructing our family home, we have installed water into the property. Have also extensively cultivated the land and planted exotic and indigenous trees as well as miraa plantation as shown by the annexure photographs marked “JKR3”.
5. That after we paid the entire purchase price in respect of the property to the respondent, we had to wait for the government to issue the titles so as to get the land transferred to my name.
6. That the government started issuing titles in the year 2018, but when we requested the respondent to effect the transfer in accordance to clause 6 of the agreement, she refused to do so.
7. That instead her husband one Silas Meme M’Ithai served us with a demand notice asking us to vacate the land through a letter dated 18<sup>th</sup> June, 2019 annexed as “JKR4”
8. That despite having complied with our agreement the respondent has totally disregarded the same and has issued us with eviction notices and actual threat has been issued for our forceful eviction.
9. That it is noteworthy that it is now 17 years since I entered into the parcel of land, I have been living on the land with my family in quiet user, occupation and possession of the same to the exclusion of the respondent.
10. That respondent and her family have allowed me and my family to live on the land, with their knowledge and approval for more than the statutory period of 12 years to claim adverse possession.
11. That respondent has never until 18<sup>th</sup> June, 2019 opposed my stay, user, occupation or possession of the land since I entered in 2002.
12. That even when I was doing extensive cultivation and development in the land, the respondent nor her immediate family did not question my actions until now. This is what has necessitated the filing of this suit, so that now the portion of land can be legally registered in my name.
13. That my family has nowhere else to go, we do not have any other place to call home, and the suit property is what we rely on for our livelihood and subsistence.
14. That all efforts to have this matter settled out of court have been futile and have been met by hostility and violence on the part of the respondent and her family.
15. That the respondent has even gone to the extent of invading my home together with her sons, husband and hired goons, destroyed my fence crops and a temporary structure within my compound. They have now threatened to burn down my house.
16. That all efforts to report the issue to the Timau Police Station have been rendered futile as the police claim that I have no court order despite having made several reports as seen from annexure “JKR4”.
17. That what is deponed to herein above is true to the best of my knowledge information and belief.
  4. At the exparte stage M/s Kiome told the court that she was seeking the grant of prayers 1, 2, 4 and 5 pending hearing and determination of this application. She told the court that although the plaintiff bought the suit land in 2002 and had settled thereon and made extensive developments, the respondent, her sons, her husband and goons had invaded his home and destroyed property with a view to evicting him from the suit land.
5. At this exparte stage, I issue the following orders:
  - a) The application is not certified urgent BUT will be heard on priority basis.
  - b) Prayer 2 is granted.
  - c) Prayer 4 is granted STRICTLY pending hearing and determination of this application.

d) Prayer 5 is granted STRICTLY pending hearing and determination of this application.

e) The application should be properly served upon the Respondent.

f) The application will be heard interpartes by **Hon. Lady Justice Mbugua, Judge, at Meru ELC Court on 30<sup>th</sup> October, 2019**

Delivered in open Court at Chuka this **16<sup>th</sup> day of October, 2019** in the presence of:

CA: Ndegwa

M/s Linda G. Kiome for the Plaintiff/Applicant

**P.M. NJORGE**

**JUDGE**