



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT MERU**

**MISC CIVIL APPLICATION NO. 14 OF 2018**

**SUSAN KIGETU M'ITARU.....APPLICANT**

**VERSUS**

**MARGARET KANUGU.....1<sup>ST</sup> RESPONDENT**

**LUCY KARIKA.....2<sup>ND</sup> RESPONDENT**

**RULING**

1. This matter emanates from an application by way of a Notice of Motion dated 2<sup>nd</sup> May 2018 brought forth pursuant to provisions of **Sections 1A, 1B, 3 and 3A of the Civil Procedure Act, CAP 21 Laws of Kenya and Order 22 Rule (1) and Order 51 Rule 1 of Civil Procedure Rules, 2010 and all other enabling provisions of the law**. The applicant seeks leave and/or extension of time to execute the tribunal award dated 12<sup>th</sup> January 1999 out of time. He is also seeking for an order of inhibition in respect of parcel no. Nyaki/Giaki/1310, 1312 and 2601 which are all resultant of sub divisions of Nyaki/Giaki/169.

2. The grounds in support of the application are set out in the body of the Motion and in the supporting affidavit of Susan Kiget M'itaru sworn on 2<sup>nd</sup> May 2018. It is contended that the applicant and her family members were awarded parcel number NYAKI/GIAKI/1310, 1312 and 2601 by the land tribunal award from land parcel No. NYAKI/GIAKI/169. The award was confirmed by the court through its ruling on 8<sup>th</sup> April 1999.

3. The objectors filed an appeal to the provincial tribunal which was never heard but was withdrawn vide a chief's letter dated 25<sup>th</sup> July 2007. All parties consented to the withdrawal but thereafter, the respondents refused to abide by the consent. The dispute was once again referred to the Njuri Ncheke Council of Elders in 2015 and the matter determined in the applicant's favour. After the said decision was reached, the respondents failed and refused to subdivide and share the land as agreed upon.

4. The applicant contends that her family members have extensively developed the land parcels, of which the respondents are actively in the process of disposing the suit parcels to 3<sup>rd</sup> parties.

5. The application has been opposed by the respondents through the affidavit of Lucy Karika sworn on 13<sup>th</sup> July 2018. She deponed that the owner of the original land parcel number NYAKI/GIAKI/169 was their father who subdivided the land parcel to Nos. 1310, 1311 and 1312 and transferred the subdivisions to various beneficiaries including herself and the 1<sup>st</sup> respondent.

6. The respondent avers that her father had two wives and she belongs to the 2<sup>nd</sup> house while the applicant is the last born in the 1<sup>st</sup> house which was settled by their father at Thuura while the 2<sup>nd</sup> house was given land parcel No. 169. What's more, the applicant and her siblings benefited from 7.8 acres from Parcel No. 169 being parcel No. 1312. That if the orders sought are granted, the 2<sup>nd</sup> respondent and all the children of the 1<sup>st</sup> respondent shall be greatly prejudiced and will suffer irreparable loss.

7. Further, Lucy Karika stated that the applicant and her brothers are using violence to illegally evict and unlawfully occupy the parcels of land that are rightfully for the children of the 2<sup>nd</sup> house.

8. The issue for determination is ***whether to grant leave to the applicant to execute the tribunal award dated 12<sup>th</sup> January 1999.***

9. The land tribunal made an award with respect to the suit land on 12<sup>th</sup> January 1999. Thereafter, the award was confirmed by the chief magistrate court at Meru on 8<sup>th</sup> April 1999 where parties were given 30 days to appeal to the provincial tribunal. There is no evidence to indicate that an appeal was lodged. Instead, the parties went silent. The chief's letter dated 25<sup>th</sup> July 2007 only states that the parties had

chosen to withdraw the land dispute case at the provincial land tribunal and they agreed on how to share the land. The particulars of the case are not given, nor is there an order of withdrawal. In 2015 the matter was tabled before Njuri Ncheke council of elders.

10. *Section 7 of the Limitations of Actions Act* provides that:

*‘An action may not be brought by any person to recover land after the end of twelve years from the date on which the right of action accrued to him or, if it first accrued to some person through whom he claims, to that person.’*

11. The Court of Appeal in the case of M’ikiara M’Rinkanya & another v Gilbert Kabeere M’mbijiwe [2007] eKLR held as follows:

*“From the above analysis, it is clear that a judgment for possession of land should be enforced before the expiry of the 12 years limitation period stipulated in section 7 of the Act. If the judgment is not enforced within the stipulated period, the rights of the decree holder are extinguished as stipulated in section 17 of the Act.....*

12. According to the applicant the delay in implementing the award is as result of the arbitrations and since the land is family owned, the respondents have always shown indications of transferring the parcels hence the inordinate delay.

13. I find that the award was granted in 1999 but an appeal was never initiated. The award has not been implemented for a period of about 20 years. Matters are heard and determined based on a hierarchical manner. When a matter is determined by a lower court or body, and a party is not satisfied with the decision there of, then an appeal may be initiated to the superior court or body. When the award was affirmed by the court, parties had a right to appeal to the provincial tribunal within 30 days but failed to do so. The appeal was not initiated. If it was, there are no particulars to that effect. The Njuri Ncheke proceedings and judgment do not fit in this hierarchical determination of disputes.

14. Consequently, since the award was not implemented within 12 years, the hands of the court are tied due to the statutory bar under *Section 7 of the Limitation of Actions Act*. However, a party may seek redress through other avenues as stipulated in M’ikiara M’Rinkanya case [supra] as well as succession being that this is family land that belonged to their deceased father of which they allege to be beneficiaries.

15. Accordingly, I am of the view that the application is unmeritorious and the same is dismissed with costs to the respondents.

**DATED, SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS 9<sup>TH</sup> DAY OF OCTOBER, 2019 IN THE PRESENCE OF:-**

C/A: Kananu

Nyenyire holding brief for Atheru for applicant

Muriithi holding brief for H. Gitonga for respondent

Applicant

**HON. LUCY. N. MBUGUA**

**ELC JUDGE**