



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT EMBU

E.L.C. CASE NO. 71A OF 2014 (O.S.)

(FORMERLY ELC KERUGOYA NO. 47 OF 2012 (O.S.))

(FORMERLY EMBU H.C. CIVIL CASE NO. 36 OF 2007 (O.S.))

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

RUGANO NTHIGA.....1ST RESPONDENT

MWIRECA KIARIRWA.....2ND RESPONDENT

NJOKA KONJI.....3RD RESPONDENT

NJERU NGICUVA.....4TH RESPONDENT

MUGO NYAGA NJERU.....5TH RESPONDENT

JUSTUS NJERU NGIRIGACHA.....6TH RESPONDENT

SILAS NJIRU NYAGA.....7TH RESPONDENT

NJUE MUCENDU NGICUVA.....8TH RESPONDENT

GIBSON NJUE NGIRIGACHA.....9TH RESPONDENT

JOHN MATI NYAGA.....10TH RESPONDENT

JUSTUS NJUKI NYAGA.....11TH RESPONDENT

BENJAMIN KITHUMBU KAMBELO.....12TH RESPONDENT

PHEANAS KAGANE.....13TH RESPONDENT

MUTURI PHENES KAGANE.....14TH RESPONDENT

TITUS NJERU KAGANE.....15TH RESPONDENT

NYAGA NGINYIRO.....16TH RESPONDENT

EVANS MATHERI IGOGO (LEGAL REPRESENTATIVE OF

STEPHENE IGOGO MATHERI.....17TH RESPONDENT

SAMUEL MUTITU NDUMA.....18TH RESPONDENT

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

AND

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

SOSPETER KITHUMBU MURANGIRI.....2ND INTERESTED PARTY

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

RULING

1. By a notice of motion dated 14th November 2019, expressed to be brought under **Order 5 Rule 1, Order 10 Rule 11, Order 45 Rule 1 of the Civil Procedure Rules, Section 3A of the Civil Procedure Act (Cap. 21) and all other enabling provisions of the law**, the 2nd Interested Party sought the following orders:

a. Spent

b. Spent

c. That the honourable court be pleased to set aside its orders of 25th July, 2018 which orders lifted a restriction registered against parcels LR No. Mbeere/Mbita/2087, 2548 and 2571.

d. That the honourable court be pleased to include parcels LR. No. Mbeere/Mbita/2087, 2548 and 2571 in the judgement upon review.

e. That the honourable court be pleased to remove from the judgement delivered by this honourable court on 26th September 2019 parcel LR. No Mbeere/Mbita/2171 which parcel was the subject of the judgement of the honourable court delivered on 9th June 2016 by Justice B.N. Olao in ELC JR Misc. Civil App. No. 3 of 2014 between Josphat Nyaga Mukembo & 21 Others Vs Attorney General and 4 Others.

f. That the honourable court be pleased to remove from the judgement delivered by this honourable court on 26th September 2019 parcels LR. No. Mbeere/Mbita/3772, 37785 & 3777 which parcels were the subject of the verdict delivered on 29th May 2003 by the District Commissioner, B.N. Mugambi in Appeal to the Minister, Appeal Case No. 45 of 1997 between Rugano Nthiga (for Ikandi Clan) Vs John Nyaga Konji (Respondent)

g. That cost be provided for.

2. The said application was based upon the various grounds set out on the face of the application and supported by the affidavit of the 2nd Interested Party sworn on 14th November 2019 and the annexures thereto. It was contended that the judgement of this court dated and delivered on 26th September 2019 should be reviewed because of discovery of new and important material facts which were not within the knowledge of the court at the time of its delivery. It was further contended that *Title No. Mbeere/Mbita/2171* ought to be removed from the purview of the judgement because it was the subject of earlier court proceedings in *Kerugoya ELC Misc. Civil Application (JR) No. 3 of 2014 – Joseph Nyaga Mukembo & 21 Others V Attorney General & 4 Others*.

3. The court has considered the said application alongside the responses and submissions filed by the Respondents to the application. The court has noted that all the matters raised by the 2nd Interested Party were matters which were within the knowledge of the Interested Party during the pendency of the proceedings. They are matters which, with due diligence, could have been canvassed during the hearing and before delivery of judgement. Moreover, the court is not satisfied that the matters raised in the application would warrant a review except, perhaps, the ground relating to *Title No. Mbeere/Mbita/2171* which was the subject of *Kerugoya JR No. 3 of 2014*.

4. The court finds no justification for setting aside its orders of 25th July 2018 lifting encumbrances against *Title Nos. Mbeere/Mbita/2087,*

2548 and 2571. The court finds no reason to set aside such orders long after delivery of judgement and more than one year after the making of the orders in question. The 2nd Interest Party has not tendered any reasonable explanation for the delay in seeking a reversal of those orders.

5. The upshot of the foregoing is that save for order No. 5 of the notice of motion dated 14th November 2019 the court finds no merit in the rest of the prayers sought. Accordingly, the court makes the following orders for disposal of the application:

- a. The court hereby grants order No. 5 of the notice of motion dated 14th November 2019.
- b. The rest of the prayers sought in the said application are hereby declined.
- c. The 2nd Interested Party shall pay the Applicants in the originating summons and the 3rd Interested Party costs of the application.

6. It is so ordered.

RULING DATED, SIGNED and DELIVERED in open court at **EMBU** this **28TH DAY** of **NOVEMBER 2019**.

In the presence of Ms. Nzekele holding brief for Mr. Okwaro for the Applicants, Mr. Kamunda for the 2nd Interested party, Mr. Siro holding brief for Mr. Ngige for the 3rd Interested Party and in the absence of the Respondents.

Court Assistant Mr. Muinde

Y.M. ANGIMA

JUDGE

28.11.19