



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT CHUKA

EMBU

ELC CASE NO. 247 OF 2015

JULIUS NGURE NGAREPLAINTIFF/RESPONDENT

VERSUS

MICHAEL NJAGI KATHIANYUDEFENDANT/APPLICANT

RULING

1. This application is dated **20th December, 2019** and seeks the following orders:
 1. That this matter be certified urgent and service be dispensed with in the 1st instance.
 2. That this honourable court do grant an order directing the defendant/applicant be allowed to deposit Kshs.10,000/= beginning this coming January and continue depositing an equal amount in court by or before the end of subsequent months for 12 months till the taxed amount totaling approximately Kshs.120,000/= is cleared, plus the requisite court collecting fees and less what I had paid them earlier.
 3. That this honourable court do grant orders restraining M/s A.P. Kariithi and Company Advocates, their servants, agents and/or any other 3rd parties acting under their direction from auctioning, selling or dealing with any of the applicant's properties or even harassing or threatening or putting in Civil jail the defendant/applicant herein.
 4. That the defendant/applicant be allowed adequate time to dispose any of his belongings to offset the amount in question as he continues to pay in court the suggested installment amount.
 5. That costs be in the cause.
2. The application is supported by the affidavit of Michael Njagi Kathianyu sworn on **20th December, 2019** and has the following grounds:-
 - a) That the bill of costs in his advocates application was taxed at Kshs.120,000/= although the applicant herein had vehemently opposed this for the instruction fee was not what had originally been agreed upon between the advocate and his client, the applicant in this matter.
 - b) That M/s A.P. Kariithi and Company Advocates have given their client who is the applicant herein a short notice which is soon expiring then they will do execution.
 - c) That the applicant is deeply aware that the advocates are targeting the same land he struggled for and obtained through this suit and at exorbitant cost with help from friends, family and other well-wishers.
 - d) That the applicant has premonition that the advocates would auction the applicant's property at throw away prices and not at their market value at which he, applicant, would sell given the adequate time and orders sought, since even less than an eighth (1/8) of an acre would settle the whole bill as taxed. The land portions are worth over Kshs.10,000,000/= jointly and any of its subdivisions is worth more than Kshs.2m, a figure much higher than what is demanded.
 - e) That no prejudice will be caused if the orders herein are allowed.
 - f) That it is in the spirit of fairness and justice that this honourable court allows this application and grants the orders sought.

3. The applicant did not come to court when the application was slated for exparte hearing.

4. The following orders are issued:-

1. The application is **NOT** certified urgent but will be heard on priority basis.

2. The applicant is directed to serve the application upon the plaintiff/respondent within 14 days of today.

3. It is directed that the application be heard interpartes before Hon. Justice Angima, the ELC Judge at **Embu, on 29th January, 2020**

4. Costs shall be in the cause.

Delivered in open Court at Chuka this 31st day of December, 2019 in the presence of:

CA: Ndegwa

P. M. NJORGE,

JUDGE.