



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT CHUKA

CHUKA ELC CASE NO. 20 OF 2019

ZIPPORAH KARIGU MWAMBI

alias KARIGU M'MUGAMBI NGITI 1ST PLAINTIFF

JOHN MWATHI M'MUGAMBI.....2ND PLAINTIFF

JEREMIAH MURAUKO MUGAMBI.....3RD PLAINTIFF

BEATRICE GACUNKU.....4TH PLAINTIFF

DAVID MUTUGI KARIGU.....5TH PLAINTIFF

JOSPHAT NJERI KIAAYA.....6TH PLAINTIFF

VERSUS

ZAVERA GAKUNDI MWITHI..... 1ST DEFENDANT

BEATRICE KATHAMBI.....2ND DEFENDANT

CHARITY KAINDI.....3RD DEFENDANT

VIRGINIA MUTHONI.....4TH DEFENDANT

JOHN KIMATHI.....5TH DEFENDANT

ALICE KARIMI.....6TH DEFENDANT

JAMES MUTUGI MWITHI.....7TH DEFENDANT

GERALD MUGAMBI.....8TH DEFENDANT

JAMES MWENDA MWITHI alias JOHN KIMATHI.....9TH DEFENDANT

STANLEY MURITHI NYAMU.....10TH DEFENDANT

MARY WAMBUI MWOBI.....11TH DEFENDANT

RULING

1. This application is brought to court under Order 8 rule 3 of the Civil Procedure Rules and Sections 3 and 3A of the Civil Procedure Act. The application is supported by the affidavit of Zipporah Karigu Mugambi, the 1st defendant and seeks the following orders:

- a) The Hon. Court be pleased to grant the applicant leave to amend her plaint as per the annexed copy.

b) The amended copy of the plaint be deemed as duly filed and duly served.

c) Costs of this application be in the cause.

2. The application has the following grounds:

i) The name of the 1st plaintiff is Zipporah Karigu Mugambi alias Karigu M’Mugambi Ngiti and not Zipporah Karigu Mwambi.

ii) The first name of the 1st defendant is spelt as Zavera and not SABERA.

iii) That land parcel No. South Tharaka/Tunyai “A”/390 has been subdivided into seven new parcels including land parcel No. South Tharaka/Tunyai “A”/4586, 4587, 4588, 4590, 4591, 4592.

iv) That the information concerning the new parcel numbers was not known to the applicants at the time they filed the suit on **30th September, 2019** because they were relying on the green card issued to them on **27th August, 2019** whereas the new titles were registered on 29th August, 2019.

v) That at the time the suit was filed the land was registered in the names of the 1st and 7th Respondents/Defendants to hold in trust for the 2nd, 3rd, 4th, 5th and 7th Respondents/defendants.

vi) That after the subdivisions made on **29th August, 2019** three portions have been registered in the names of the 10th, 11th and 12th defendants.

vii) That information reaching the applicants indicates that the 5th defendant is the same person being the names of James Mwenda Mwithi.

viii) That it is in the interest of justice that the seven new land parcels be consolidated back to the old land parcel No. South Tharaka/Tunyai “A”/390 so that the rights and claims of the Applicants can be determined by this Hon. Court.

ix) That although new parcel numbers have been carved out of land parcel No. South Tharaka/Tunyai “A”/390 there has been no subdivision done on the ground and it hard for the applicants to know where their respective land parcels lie on the ground and we do not know which of the respondents is holding the land titles to our particular areas we are occupying.

x) The defendants will not suffer any prejudice.

3. On **25th November, 2019** the parties had intimated that they were seeking an out of court settlement. They were to come to court on **9th December, 2019** to record a settlement. On **9th December, 2019**, Mr. Kaai Mugambi, the defendants’ advocate told the court that the parties had failed to reach a consent. He asked the court to issue directions with a view to the suit being escalated to full hearing.

4. Mr. Kaai Mugambi told the court that he was not opposed to the application being allowed.

5. The following directions are issued:-

a) This application is allowed with costs to be in the cause.

b) The plaintiffs are directed to fully comply with Order 11, CPR within 21 days of today and the defendants are directed to do so within 21 days after receipt of the plaintiffs’ compliance documents.

c) Parties are to come to court to take directions on **10.1.2020**.

Delivered in open Court at Chuka this **9th day of December, 2019** in the presence of:

CA: Ndegwa

Riungu h/b Kithaka for the Plaintiff

Kaai Mugambi for the Defendants

P. M. NJOROGE,

JUDGE.