



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT CHUKA
CHUKA PETITION CASE NO. 09 OF 2017
IN THE MATTER OF CHAPTER FOUR – THE BIL OF RIGHTS
IN THE MATTER OF ARTICLE 19, 20, 21, 22 AND 23 OF THE CONSTITUTION OF KENYA
IN THE MATTER OF ENFORCEMENT OF BILLS OF RIGHTS

AND
IN THE MATTER OF ALLEGED CONTRAVENTION OF FUNDAMENTAL RIGHTS AND FREEDOMS UNDER ARTICLE 28, 40 AND 47 OF THE CONSTITUTION OF KENYA, 2010

BETWEEN

KAIMBA MANGAARA.....PETITIONER

VERSUS

THARAKA NITHI COUNTY GOVERNMENT.....RESPONDENT

RULING

1. This application is dated **23rd February, 2018** and seeks the following orders:

- 1. That** this honourable court be pleased to order the Government valuer Meru County to visit plot No. 77 Marimanti Market with a view to quantify the market value thereof and assess the mense profits that have accrued from the said plot from 1996 todate.
- 2. That** the cost of the cause (sic).

2. The application is buttressed by the affidavit of **KAIMBA MANGAARA**, the applicant, and has the following grounds:

- a. That the applicant has sued the respondent for compensation and mense profits.
- b. That there is need to quantify the value of the property to enable this court reach a just determination of the issue.
- c. That it is in the interest of justice that this application is preferred.

3. The applicant’s supporting affidavit sworn on **23.2.2010** reads as follows:

1. That I am the petitioner/applicant herein well versed with the facts of this matter and therefore competent to make and swear this affidavit.

2. That I have been the proprietor of plot No. 77 Marimanti Market in the erstwhile defunct Tharaka Council (sic) Council which is the Respondent herein annexed and marked "KM1" is a copy of minutes of 1996.

3. That unfortunately for me since allocation thereof I have never had any fruitful use of the said property.

4. That the erstwhile Defunct Tharaka Council (sic) Council began to harass me wherein I filed a suit No. MERU CMCC 262 of 2005 which suit was ruled in my favour annexed and marked "km2" is a copy of the decree.

5. That soon after the decision was delivered, I embarked into proceeding with my developments. I was denied that right.

6. That I drew building plans for approval by the relevant authorities but the respondent declined. I wanted to put a petrol station but I have been frustrated.

7. That I began to fence my plot but to my dismay and surprise the respondent descended on the same and demolished my fence. I put another to keepoff trespassers.

8. That the respondent had summoned me with a view to compensate me but when I presented my proposal it abandoned the issue annexed and marked "KM3 a & b" respectively are copies of the letter by respondent and my attendant proposal.

9. That the respondent is determined to frustrate me and ensure that it has trumped on my rights. I cannot build, take possession or do anything meaningful wherefore this application.

10. That the determination of the value of the property is therefore necessary.

11. That what is deponed hereinabove is true to the best of my knowledge, information and belief.

4. I find that the application lacks merit at this stage for 2 reasons:

a. It goes into the substratum of the Petition before it has been heard.

b. The petitioner has ignored this court's orders issued on 13th December, 2017.

Delivered in open court at Chuka this 26th day of February, 2018 in the presence of:

CA: Ndegwa

Miss Njenga for the Petitioner

P.M. NJOROGE

JUDGE