



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT CHUKA

CHUKA ELC CASE NO 71 OF 2017

FORMERLY MERU ELC CASE NO. 68 OF 2013

FRANCIS MARETE.....PLAINTIFF

VERSUS

PHILIP NJERU MWATHI & 4 OTHERS.....DEFENDANTS

RULING

1. This application seeks orders:

1. That the honourable court be pleased to order and/or direct that a duly authorized government surveyor and the district land registrar in charge of Tharaka Sub-County do visit L.R. No. THARAKA NITHI/CHIAKARIGA "A"/269, 270 and 1216 and mark out their extent and boundaries and fix beacons and further determine whether the 1st and 2nd defendants have encroached into LR: THARAKA NITHI/CHIAKARIGA "A"/270 and file a report in court within a specified period.
2. That in the event of prayer (1) being granted, parties do share the costs equally.
3. That the officer in charge of Chiakariga police station do provide security.
4. Costs of this application be provided for.

2. It has the following grounds:

- a) That this is basically a boundary dispute
- b) That a report can assist to narrow down issues
- c) That these orders are sought for the good of all parties
- d) That parties should share the costs of the government surveyor and the district land registrar.
- e) That there is need for officer in charge of Chiakariga police station to provide security during the exercise.

3. It is supported by the affidavit of Erastus Mwikamba Njarumbi.

4. I note that the supporting affidavit annexed to this application is sworn by Josphat Kithaka Kamwara, the plaintiff and not by Erastus Mwikamba Njarumbi as claimed in the application. The applicant claims that Erastus Mwikamba Njarumbi is an advocate located near Maximum Miracle Centre, Chuka Town. If indeed the said Erastus Mwikamba Njarumbi is an advocate, it is pellucid from the application that he is veritably indolent and spectacularly careless.

5. I find that the application is incompetent for claiming to be supported by a person who is not the applicant. I also find that it is misplaced in that if the orders sought are granted they would go against the claim of fraud put forward by the plaintiff, before this case is heard and determined.

6. The solution is for the suit to be heard and determined expeditiously. It is ordered as follows:

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

b) The defendants are required to fully comply with Order 11, CPR, within the next 30 days.

c) Directions on 10.4.2018

d) The plaintiff to serve the orders issued by the court today upon the 1st defendant's advocate within 10 days of today.

7. It is so ordered

Delivered in open court at Chuka this 13th day of February, 2018 in the presence of:

CA: Ndegwa

I.C.Mugo for the plaintiff

Josphat Kithaka – 2nd defendant.

P. M. NJOROGE,

JUDGE.