



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT CHUKA**

**CHUKA ELC CASE NO. 145 OF 2017**

**FORMERLY MERU ELC. 151 OF 2013**

**STANLEY NYAGA M'BEI.....1<sup>ST</sup> PLAINTIFF**

**CALVIN GITONGA M'BEI.....2<sup>ND</sup> PLAINTIFF**

**ERICK MUGAMBI M'BEI – DECEASED**

**(SUING THROUGH NEXT FRIEND**

**CAROLINE MUKWAMUGO.....3<sup>RD</sup> PLAINTIFF**

**VERSUS**

**M'BEI KIRAITHE.....DEFENDANT**

**RULING**

1. This application is dated **8<sup>th</sup> February, 2018**. It seeks the following orders:

1. That the application dated **17.6.2013** was heard ex-parte and interim orders of injunction were granted by this honourable court on **18.06.2013** restraining the defendant by himself, his servants, agents, assigns or any person acting on his behest from charging, disposing or in any other manner from alienating land parcels L.R. **MWIMBI/S.MUGUMANGO/1849, 1850 and 1852** pending the hearing and determination of the application.

2. That an inhibition order was also issued against the land parcels L.R. **MWIMBI/S.MUGUMANGO/1849, 1850 and 1852** pending the hearing and determination of the application.

3. That the interim orders granted on **18.06.2013** were vacated by this honourable court on **08.10.2013**.

4. That the plaintiffs to obtain a date for direction from the registry to fix a hearing date for the application dated **17.06.2013**.

5. That application dated **09.10.2013** was heard on **11.10.2013** ex-parte and interim orders vacated by this honourable court on **18.06.2013** were reinstated for 30 days or until the matter is heard inter-parties.

6. That applicants were ordered to obtain a date for inter-parties hearing before this court DR within 14 days.

7. That on **17.10.2013** before the DR the matter was fixed for mention on **24.10.2013**.

8. That on **24.10.2013** before the DR the matter was fixed before the judge on **30.10.2013** for further orders. Defendant to be served. Interim orders were extended.

9. That from the foregoing the interim orders have taken more than 12 months before the matter is heard inter-parties and being dissatisfied with the orders placed into my parcels of land by the plaintiffs/applicants be discharged, varied or set aside (sic).

10. That costs of this application be provided for.

2. It has the following grounds:

- a) That the applicant is the registered owner in possession of the suit parcels of land in which he cultivates to earn a living.
- b) That the applicant is elderly, sickly and feeble.
- c) That since the plaintiffs/respondent are enjoying interim orders it is now more than 4 years since the matter was mentioned in this court, it is now clear that they are not interested in prosecuting this matter any further, thus a need to have the suit dismissed for want of prosecution.
- d) That defendant/applicant attaches profound economic and sentimental value to the said parcels of land, and shall suffer irreparably, if the orders sought are not granted.

3. Mr. Mugo, the plaintiff's advocate, told the court that the application had not been served upon him

4. I find that the orders sought constitute no orders at all but amount to a narration of what has been happening in this case. I also note that the suit has not been heard and determined. The interim orders issued by this court were meant to preserve the suit land until this suit is heard and determined.

5. The plaintiff's advocate has intimated that this is a suit that should be heard by the CM's Court.

6. It is ordered as follows:

1. This application is dismissed with costs to be in the cause.
2. This suit is **transferred to Chuka CM's Court for hearing and determination.**

7. It is so ordered.

Delivered in open court at Chuka this **13<sup>th</sup> day of February, 2018** in the presence of:

CA: Ndegwa

I.C. Mugo for the plaintiff

M'Bei Kiraithe – defendant

**P.M. NJORGE**

**JUDGE**