



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT OF KENYA AT CHUKA**

**CHUKA ELC CASE NO 226 OF 2017**

**DAVID KAMUNDI MURANGA ..... PLAINTIFF**

**VERSUS**

**CHARLES NJAGI KANGA..... DEFENDANT**

**RULING**

1. This application is dated **6<sup>th</sup> November, 2017**. It states that it has been brought to court under Sections **1A , 1B, 3 and 3A** of the Civil Procedure Act and **Order 1 Rule 10** of the Civil Procedure Rules and **Article 40 and 50** of the Constitution of Kenya.

2. The application seeks the following orders:

1. That the Applicants/Interested parties in this case (sic).

2. That this honourable court be pleased to stay its orders of **17<sup>th</sup> October, 2017** pending hearing and determination of this application or as the court may direct.

3. That this honourable court be pleased to set aside the judgment delivered on **17<sup>th</sup> October, 2017** as the same was obtained through an abuse of the court process, fraud and perjury and have the same heard with all the parties and consolidate the same with **CHUKA ELC NO. 116 of 2017** formerly **MERU HCCC NO. 83 of 2009**.

4. That the costs of this application be provided for.

3. The application has the following grounds:

a) That the applicants live on land reference **No. Muthambi/Lower Kirimba/1604** as their father left to another county and lives in Tigania.

b) That the said land is ancestral land and cannot be sold without consent of the family.

c) That the defendant's father purported to sell the land to the plaintiff and an objection was made and parties were advised by land control board to go to court.

d) That **HCCC No. 83 of 2009** was filed in Meru and is now this court's suit No. **116 of 2017**.

e) That the defendants have conspired to cheat the court and get an order to circumvent the hearing of this court's case **No. 116 of 2017** formerly Meru **HCCC No. 83 of 2009**.

f) That the intervention of this court is necessary to avoid orders obtained through abuse of the court process.

**DATED AT MERU THIS 6<sup>TH</sup> DAY OF NOVEMBER, 2017**

**MAITAI RIMITA & CO.**

**ADVOCATES FOR THE INTERESTED PARTIES**

4. The application is supported by the joint affidavits of Charles Nyaga and Nicholas Mwiti which states as follows:

“We **CHARLES NYAGA and NICHOLAS MWITI** of **P. O. Box 75 CHUKA** make oath and state as follows:

1. That we are the Applicants/Interested Parties herein and therefore competent to make and swear this affidavit.
2. That the subject matter herein is Land Reference No. **MUTHAMBI/LOWER-KRIMBA/1604** which is our ancestral land.
3. That we live on the said land but in the **years 2008 and 2009** the plaintiff in this case started telling us that we were on his land and should be evicted.
4. That we learnt that the defendant/our father had secretly attempted to sell the land to the plaintiff.
5. That the defendant and the plaintiff know that the land belonged to us and could not be sold without our consent and therefore we moved to court.
6. That we filed High Court **Civil Case No. 83 of 2009** at Meru which was transferred to this court and registered as **ELC NO. 116 of 2017** and comes for mention on **7<sup>th</sup> November, 2017**. (Annexed is a copy of the plaint marked “**CNii**”).
7. That the court ordered that inhibition be registered against the Title awaiting hearing of the case.
8. That on **2<sup>nd</sup> November, 2017** the plaintiff herein came with a judgment in this case and threw it at us asking us to move from the land. (Annexed is a copy of the same marked “**(CNii)**”).
9. That we were surprised since we were waiting for our case which is fixed for **7<sup>th</sup> November, 2017** and we (sic) to see our advocate.
10. That our advocate was also surprised and we all learnt that this was a separate and different case filed by the plaintiff in conspiracy with the defendant to fool and cheat the court to avoid full hearing of our case.
11. That we are advised and believe the advice to be sound that what the parties did in this case was in contravention of the Rules and Practice of this court.
12. That we are further advised that the fraudulent judgment obtained by the parties by not disclosing the truth to the court is obtained through an abuse of the process of this court and should not be allowed to stand.
13. That the parties are rendering us landless and injustice will be visited upon us unless this court intervenes.
14. That the contents of this affidavit are true to the best of our knowledge, information and belief.

5. On **30<sup>th</sup> April, 2018**, Miss Munga of Maitai Rimita & Co. Advocates told the court that the Consent judgment delivered on **30<sup>th</sup> April, 2018** in **ELC 116 of 2017** had compromised and collapsed this application. She asked the court to note this fact and to take the necessary action.

6. I agree that this application has been compromised. I note that filing submissions as earlier ordered by the court is veritably pyrric and unnecessary.

7. In the circumstances, this application is dismissed with no order as to costs.

Delivered in open court at Chuka this **30<sup>th</sup> day of April, 2018** in the presence of:

CA: Ndegwa

Miss Munga for the applicants

David Kamundi Muranga – Plaintiff

Charles Njagi M’Kanga – Defendant

Charles Nyaga – 1<sup>st</sup> Interested Party

Nicholas Mwiti – 2<sup>nd</sup> Interested Party

David Kamundi Muranga – Plaintiff

**P. M. NJORGE**

JUDGE