



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT CHUKA**

**CHUKA ELC CASE NO. 306 OF 2017**

**GINSON KIRAGU MBERIA alias GINSON KIRAGU NJAGI.....PLAINTIFF**

**VERSUS**

**STANLEY BUNDI RIMBERIA.....DEFENDANT**

**RULING**

1. This application is dated **18<sup>th</sup> April, 2018** and states that it is brought to court under order 40 Civil Procedure Rules, Sections 1A, 1B, 3 and 3A Civil Procedure Act and Article 159 of the Constitution of Kenya and all other enabling provisions of the law.

2. The application seeks the following orders:

- a) That this honourable court be pleased to certify this matter as very urgent and that service be dispensed with.
- b) That the honourable court be pleased to issue inhibition orders against all dealings in land parcel No. Mwimbi/Murugi/180 pending the hearing and determination of this suit.
- c) That this honourable court be pleased to issue an interlocutory order of injunction against the respondents (sic), their servants, agents, representatives or any other persons claiming through them from restraining, evicting, disposing, fencing, taking over or in any other way interfering with user, occupation and possession of the applicant in land parcel No. Mwimbi/Murugi/180 pending the hearing and determination of this application.
- d) That this honourable court be pleased to issue an interlocutory order of injunction against the respondents (sic) their servants, agents, representatives or any other persons claiming through them from restraining, evicting, disposing, fencing, taking over or in any other way interfering with user, occupation and possession of the applicant in land parcel no. Mwimbi/Murugi/180 pending hearing and determination of this suit.
- e) That the Officer Commanding Station (O.C.S) Chogoria Police Station be empowered to ensure compliance with this order.
- f) That costs be provided for.

3. The application is supported by the affidavit of Ginson Kiragu Mberia, the applicant sworn on **15<sup>th</sup> April, 2018** which states as follows:

**I, GINSON KIRAGU MBERIA alias GINSON KIRAGU NJAGI of P. O. Box 2387-60200, Meru** within the Republic of Kenya do hereby make oath and swear as follows;

1. That I am the applicant herein thus competent to make and swear this affidavit.
2. That I am well advised by my advocate on record, advice which I verily believe to be true that there is need to file this application due to the circumstances of this case.
3. That since 1970's my family and I have been in complete user, occupation and possession of land parcel No. Mwimbi/Murugi/180 measuring 3 acres.
4. That I have lived therein with my family and have extensively developed this land for so many years.

5. That my exclusive, possession, user and occupation of the land has been for more than thirty years considering we entered into the land so many years ago.
6. That there has indeed been a long standing dispute with the defendant and the land was trust land as rightfully determined by court in HCC No. 30 of 1987.
7. That family has grown up in this land and we know no other land as we have lived here all our lives.
8. That only recently the defendants decided to invade into our home as they left a trail of destruction.
9. That the defendant/respondent even torched my son's house in the raid as seen from the bundle of photographs annexed herein GKM 1 a, b, c, d, e, f, g.
10. That the matter was reported to the police and they were arrested and charged in court in Chuka in a criminal case where they took plea. The matter is now pending.
11. That the defendant as if not satisfied with torching down one of my houses also threatened to kill me, and I have also reported this matter to the police vide Occurrence Book No. 17/3/4/2018
12. That all these threats have necessitated me to look for my family's shelter elsewhere as I come in the morning and leave by dusk, therefore designating me homeless.
13. That further recently, buyers have been coming to the compound to view the land for sale and I am apprehensive that the same shall be sold at any time now and a possible eviction is clearly imminent.
14. That for these reasons I urge this court to allow the prayers sought in the application and preserve the suit property.
15. That all what is deponed to above is true to the best of my knowledge, information and belief.

4. The application was slated for inter-parties hearing on **24.4.2018**. Miss Kiome told the court that the respondent's advocate, Mr. Mokuu, had not got instructions from his client who was in jail. She told the court that she and Mr. Mokuu had agreed that prayer C could be granted. She also submitted that the application could be allowed as it was not opposed.

5. I opine that granting prayer C more or less disposes of the application. I, therefore, and because the application is not opposed, find it necessary to allow the application in its entirety so that the parties can pursue the main suit.

6. In the circumstances it is ordered as follows:-

1. Prayer (a) is spent and therefore granting it would amount to engaging in a futile exercise.
2. Prayer (d) is granted with the effect that an interlocutory injunction in the terms contained in the prayer is granted pending the hearing and determination of this suit.
3. It is clarified that, and for avoidance of doubt, prayer (e) is granted so that the Commanding Officer (O.C.S) Chogoria Police Station is empowered to ensure compliance with order (d) herein.
4. Costs shall be in the cause.
5. As agreed by the advocates representing the parties, parties are directed to come to court for **directions** on **14.5.2018**.

**Delivered in open court at Chuka this 24<sup>th</sup> day of April, 2018** in the presence of:

CA: Ndegwa

M/S Kiome for the Plaintiff

**P. M. NJOROGE**

**JUDGE**