



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT CHUKA

CHUKA ELC CASE NO. 18 OF 2017

FORMERLY MERU ELC 66 OF 2016

CECILIO MURANGO MWENDA & 2 OTHERS.....PLAINTIFFS

VERSUS

ISAAC KIMATHI IKUNGA.....DEFENDANT

RULING

1. This application is dated **31st May, 2016** and seeks orders:-

1. That on the first instance this honourable court be pleased to certify this application as urgent and the same be heard ex-parte.

2. That this honourable court be pleased to issue temporary orders of injunction to restrain the defendant by himself, his agents, servants, employees or anyone else legally acting under his name and behalf from entering, fencing, encroaching or trespassing into the applicants plots L.R. NO. N. THARAKA/MARIMANTI/2272, L.R. NO. N. THARAKA/MARIMANTI/2273, L.R. NO. N. THARAKA/MARIMANTI/2274 pending the interpartes hearing of this application.

3. That this honourable court be pleased to issue temporary orders of injunction to restrain the defendant by himself, his agents, servants, employees and anyone else legally acting under his names from entering, fencing, encroaching or trespassing into the applicants plots L.R. NO. N. THARAKA/MARIMANTI/2272, L.R. NO. N. Tharaka/Marimanti/2273, L.R. NO. N. Tharaka/Marimanti/2274 until this suit is heard and determined by this honourable court.

4. That the orders to be issued by this honourable court be served upon the O.C.S. Marimanti Police Station to ensure compliance.

5. That this honourable court be pleased to issue Penal Notice for none compliance of any court orders to be issued herein upon service.

6. That the costs of this application be borne by the defendant/respondent.

2. The application has the following grounds:

a) The applicants are the registered proprietors of the plots L.R. NO. N. THARAKA/MARIMANTI/2272, L.R.NO. N. THARAKA/MARIMANTI/2273, LR. NO. N. THARAKA/MARIMANTI/2274.

b) The defendant has no legal rights to trespass, fence or encroach into the plaintiff's said plots.

c) The defendant is seeking to sell part of the plaintiffs' plots which will occasion the applicants irreparable loss and damage.

d) That it is only fair, just and equitable that the applicants be granted the orders prayed for herein to preserve their rights and interest over the said plots.

e) Unless the orders herein are granted the plaintiffs will suffer prejudice and damage.

3. The application is supported by the affidavit of Cecilio Murango Mwenda, the 1st defendant, sworn on **31st May, 2016** AND which states:

I, CILICIO MURANGO MWENDA OF P. O. Box 1163-60200, MERU in the Republic of Kenya do hereby make oath and state as follows:

1. That I am the first plaintiff/applicant herein hence I am competent to make and swear this affidavit.
2. That I make this affidavit with full authority of my co-plaintiffs who have duly signed a written authority which is filed herein.
3. That I am an advocate of the high court of Kenya practicing as such in name and style of Murango Mwenda & Company advocates and I am a resident of Tharaka Nithi and Meru Counties.
4. That in or about the year 2002, I and my co-plaintiffs and other people bought a parcel of land measuring 2.00 Acres or thereabout situate within Marimanti Township in Tharaka South, Tharaka Nithi County.
5. That when we bought the said parcel of land, the same was excised from the mainland and marked with survey beacons on the ground and we took over possession of the land.
6. That later, the parcel of land was subdivided into commercial plots measuring 50 feet by 100 feet and allocated to the shareholders.
7. That upon the completion of the subdivision of the plots the mutation forms were duly approved and registered at the lands office accordingly.
8. That in or about the year 2009, I and my co-plaintiffs were duly registered as the absolute proprietors of the plots as follows:
 - a) Stephen Mugao Mathenbe – LR. NO. N. Tharaka/Marimanti/272
 - b) Cicilio Murango Mwenda – LR. NO. N. Tharaka/Marimanti/2273
 - c) Bernard Njeru – LR. NO. N. Tharaka/Marimanti/2274 copies of the register are marked “EMM1”, “EMM2” “EMM3”
9. That we took possession of our said plots, we also put a live fence marking the extent and the boundaries of the plots and there were no objections from any person at all.
10. That later and subsequent to the acquisition of our said plots, the defendant acquired a parcel of land adjacent to our plots and his is number LR. NO. N. Tharaka/Marimanti/2391. Annexed hereto is a copy of the register marked “CMM2”.
11. That in or about the month of August, 2015 the defendant while fencing his parcel of land with barbed wire fenced off parts of our said plots without our authority.
12. That when the defendant started encroaching into our plots, I contacted him and brought to his attention his acts of encroachment and requested him to remove his fence from our plots but he refused to comply and he left his fence on our plots thereby denying us access to the same.
13. That in or about the month of May, 2016 the defendant subdivided his plot LR. NO. N. Tharaka/Marimanti/2391 including the encroached parts of our plots into 26 plots with an intention of selling and transferring them to other parties.
14. That if the defendant is allowed to proceed with the process, our rights and interests will be prejudiced as he has annexed and grabbed parts of our plots.
15. That in view of the foregoing, there is need for an order of this honourable court to compel the defendant to remove the encroachment from our plots.
16. That unless the defendant is restrained by this honourable court, we will incur irreparable loss and damage. I make this affidavit in support of our application annexed hereto.
17. That what I have deponed to herein above is true to the best of my knowledge, information and belief.
 4. During the hearing of the application interpartes, the parties asked the court to allow the application and grant an order that status quo be maintained.
 5. The court hereby directs that status quo be maintained and that this application be deemed heard and settled.
 6. Costs shall be in the cause.
 7. Hearing of the main suit will take place on **2nd July, 2018**.
 8. It is so ordered.

Delivered in open Court at Chuka this **28th day of May, 2018** in the presence of:

CA: Ndegwa

Kiogora Arithi for the Applicants

Manasses Kariuki for the Respondent

P.M. NJORGE

JUDGE