



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT CHUKA

CHUKA ELC PETITION CASE NO. 10 OF 2017

DAMSON MIANO KANGANGI.....PETITIONER

VERSUS

THE LAND REGISTRAR CHUKA.....1ST RESPONDENT

THE HON. ATTORNEY GENERAL.....2ND RESPONDENT

WACHIRA ROBERT NYAGA.....1ST INTERESTED PARTY

BONFACE MBOGO NJOGU.....2ND INTERESTED PARTY

AGNES NJOKI NJOGU.....3RD INTERESTED PARTY

MICHAEL NJAGI NJOGU.....4TH INTERESTED PARTY

JOHN MURITHI NJOGU.....5TH INTERESTED PARTY

RULING

1. On **7th February, 2018**, the Petitioner's advocate, Mr. Ondari asked the court to grant him **45 days** to substitute the deceased petitioner. His prayer was granted. The parties were directed to come to court for directions on **26th April, 2018**.

2. On **26th April, 2018**, Mr. Ondari did not come to court. Mr. Manasses Kariuki held brief for advocate Ithiga for the 1st, 2nd, 3rd, 4th and 5th Interested Parties. Miss Mbaikiata, representing the 1st and 2nd Respondents was present in court. Mr. Wachira Robert Nyaga, the 1st Interested Party, who represents himself in this matter was also present in court.

3. Mr. Kariuki told the court that as Mr. Ondari was not in court to explain why the Petitioner had not been substituted, this petition should be dismissed. He told the court that Mr. Ithiga, had not received an application for substitution of the deceased petitioner. Mr. Kariuki termed this conduct as an abuse of the court process. Miss Mbaikiata, agreed with the sentiments expressed by Mr. Kariuki and asked the court to dismiss the suit. She said that the absence in court of the Petitioner's advocate was indicative of the Petitioner's aim to merely delay the hearing of the matter.

4. I do note that 2 suits filed by the Petitioner were dismissed by this court. In **ELC 131 of 2017**, the 3rd defendant was the 2nd Interested Party in this matter. This suit was marked as withdrawn at the instance of the Petitioner's advocate on **28th February, 2018**. In **ELC 137 of 2017**, the 1st Interested Party was the 2nd defendant. The 2nd Interested Party was the 8th defendant. The 3rd Interested Party was the 7th defendant. The 4th Interested Party was the 10th defendant. The 5th Interested Party was the 5th defendant. This was dismissed by the court for non-prosecution on **21st November, 2017**.

5. It is clear that the Petitioner had sought judicial relief in 3 suits which all concerned the same suit land. I opine that this conduct amounts to a veritable abuse of the court process. In his supporting affidavit sworn on **17th August, 2017** and filed in court on the same day, the Petitioner intimates that he had filed **Meru HCCC. 23 of 2011 and 38 of 2011** by way of Originating Summons. In paragraph 18 of the supporting affidavit he nebulously states: ***"THAT for one reason or another these cases were not heard on merit. They have since been withdrawn."***

6. That the Petitioner had pursued his claim through many suits amounts to abuse of the court process. That this Petition was filed when the Petitioner had not concluded prosecution of other suits he had filed, amounts to conduct that this court deprecates. That his advocate has failed to have the Petitioner substituted, even though he is the one who moved the court to grant him 45 days to do so, exacerbates the situation.

7. The Petitioner having not made the apposite substitution within the stipulated time, this conduct, evincing disobedience of a court order, and taking into account the general conduct of the Petitioner in at least three other suits where he sought to prosecute parallel suits concerning the same subject matter, I find it meritorious to dismiss this suit.

8. In the circumstances, this suit is dismissed.

9. I do note that prayer (b) for inhibition granted on 18th September, 2017 is spent. However, for avoidance of doubt, the inhibitions placed against land parcels **MAGUMONI/ITUGURURU/1997, 1998, 1999, 2002, 2004, 2068, 2044, 2045, 2069, 2532 and 2533 are VACATED forthwith.**

10. Costs are awarded to the Respondents and to the Interested Parties.

11. It is so ordered.

Delivered in open court at Chuka this **22nd day of May, 2018** in the presence of:

CA: Ndegwa

Mokua for Njeru Ithiga for 1st, 2nd, 3rd, 4th & 5th Interested Parties

Other parties absent

P.M. NJOROGÉ

JUDGE