



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT CHUKA

CHUKA ELC MISCELLANEOUS APPLICATION CASE NO. 3 OF 2018

CHUKA UNIVERSITY.....PLAINTIFF

VERSUS

LUCIA NDURU.....1ST DEFENDANT

KARIUKI NDURU.....2ND DEFENDANT

MUTEMBEI NDURU.....3RD DEFENDANT

RULING

1. This application is brought to court under Order 40 Rule 1 and Order 51 Rule 1 of the Civil Procedure Rules 2010; Sections 1A, 1B, 3A and 63 (e) of the Civil Procedure Act and all other enabling provisions of the law.

2. The application seeks the following orders:

- a. That this application be certified urgent and be heard ex-parte.
- b. That service of this application be dispensed with in the first instance for reasons of urgency.
- c. That this Honourable Court do issue an order of temporary injunction to stop the 2nd and 3rd defendants from burying the remains of Lucia Nduru (deceased) on parcel number MAREMBO/RIANTHIGA/293 pending the inter-partes hearing of this application and pending the hearing and determination of the main suit.
- d. That pending the hearing and determination of the main suit, the Honourable Court be pleased to issue orders of mandatory injunction restraining the 2nd and 3rd defendants either by themselves, their relatives, agents and/or assignees from burying the 1st defendant (deceased) or any other person on the suit land or in any way interfering with the suit land being parcel number MAREMBO/RIANTHIGA/293.
- e. That this Honourable Court be pleased to issue an order of permanent injunction restraining the defendants from trespassing on parcel number MAREMBO/RIANTHIGA/293.
- f. That Officer Commanding Station (OCS) at Chuka Police Station be directed to effect this honourable Court's orders.
- g. That costs of this application be provided for.

3. When the application was to be heard interpartes on **26th June, 2018** Mr. Michael Otieno for the plaintiff told the court that his client wished to withdraw the application because this court, on 19th June, 2018 delivered a ruling in Chuka ELC NO. 238 of 2017 which disposed of that suit. He told the court that the orders granted in that suit rendered this application superfluous. He asked that the application be marked as withdrawn with no order as to costs.

4. Mr. Mark Muriithi, holding brief for the defendants advocate, Mr. Manasses Kariuki, told the court that the defendants were not opposed to the withdrawal of the application with no order as to costs.

5. I do note that in this court's ruling delivered on **19th June, 2018**, at paragraph 31, page 62, this court issued the following orders:

- a. The plaintiff's suit succeeds and it is hereby declared that the plaintiff is the legal owner of Land Reference Number

MAREMBO/RIANTHIGA/293.

b. The defendants' counter-claim is hereby dismissed.

c. It is hereby declared that the defendants are trespassers on Land Reference Number MAREMBO/RIANTHIGA/293.

d. An order is hereby issued to evict the defendants from Land Reference Number MAREMBO/RIANTHIGA/293.

e. Costs for this application, the plaintiff's claim and the defendants' counter-claim will follow the event and are awarded to the plaintiff BUT should the defendants vacate the suit land within the stipulated period of 3 months from the date of this ruling, I exercise my discretion and order that there will be a judicial remission of the costs so that the defendants will not be condemned to pay any costs to the plaintiff.

6. I do note that the orders issued by this court on 19th June, 2018 subsume the orders being sought in this application.

7. In the circumstances, this suit is marked as withdrawn and should be removed from the list of pending suits at Chuka ELC Court.

8. Parties will bear own costs.

9. It is so ordered.

Delivered in open court at Chuka this 26th day of June, 2018 in the presence of :

CA: Ndegwa

Michael Otieno for the Plaintiff

Mark Muriithi h/b Manases Kariuki for the Defendants.

P. M. NJOROGE

JUDGE