



**REPUBLIC OF KENYA**

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

**CHUKA ELC CASE NO. 276 OF 2017 (OS)**

**IN THE MATTER OF THE REGISTRATION OF LANDS ACT NO. 3 OF 2012 SECTION 28 (H)**

**AND IN THE MATTER OF ORDER 37 RULE 7 CIVIL PROCEDURE RULES**

**AND IN THE MATTER OF SECTION 38 OF THE LIMITATIONS OF ACTIONS ACT CHAPTER 22 LAWS OF KENYA**

**AND IN THE MATTER OF AN APPLICATION BY ERASTUS NJAGI KAMUNDI THAT THE COURT DO MAKE A  
DECLARATION THAT HE IS ENTITLED TO 2 ACRES OUT OF LR: MWIMBI/N.MUGUMANGO/1318**

**AND IN THE MATTER OF AN APPLICATION BY ERASTUS NJAGI KAMUNDI THAT HE BE REGISTERED WITH 2  
ACRES OUT OF LR: MWIMBI/N. MUGUMANGO/1318**

**ERASTUS NJAGI KAMUNDE.....PLAINTIFF**

**VERSUS**

**LINUS RIUNGU M'KANGA.....DEFENDANT**

**RULING**

1. This suit (**ELC 276 of 2017, O.S**) was filed by the applicant on **14<sup>th</sup> August, 2017**. The appellant is Erastus Njagi Kamunde and the Respondent is Linus Riungu M'Kanga.
2. This suit seeks an order that the applicant should be registered as owner of 2 acres of Land Parcel NO. **MWIMBI/N.MUGUMANGO/1318** by way of the doctrine of adverse possession.
3. On **23<sup>rd</sup> May, 2008**, Linus Riungu M'Kanga the respondent in this case filed **HCCC. 60 of 2008** at Meru. The defendant was Erastus Njagi Kamundi, the applicant in this suit. This suit is now Chuka **ELC Case No. 94 of 2017**.
4. The plaintiff's plaint in **ELC Case No. 94 of 2017** prays for Judgment against the defendant for:
  - a) An order directing the defendant to remove the caution placed against the plaintiff's land parcel No. **MWIMBI/MUGUMANGO/1318** and in default, the honourable court do empower the Executive Officer, Meru Law Courts to sign all the requisite documents to facilitate the removal of caution placed by the defendant on the said plaintiff's land.
  - b) An order of permanent injunction restraining the defendant, his agents, servants, assignees, employees and or anybody else acting on his behalf from trespassing, entering and or cultivating the plaintiff's land parcel NO. **MWIMBI/N. MUGUMANGO/1318**.
  - c) Costs of the suit.
5. In paragraph 5 of his defence, Erastus Njagi Kamundi, the defendant in Chuka **ELC 94 of 1997**, avers that he is a bonafide purchaser for value and is entitled to the suit land and that is why he registered an encumbrance to guard his lawful interests over the suit land.
6. It is pellucid to me that the Applicant in Chuka **ELC No. 276 of 2017** who is also the defendant in Chuka **ELC No. 94 of 2017** is claiming land contained in the same suit land. I do note that Chuka **ELC 276 of 2017** was filed on **14<sup>th</sup> August, 2017** almost ten (10) years after Chuka **ELC No. 94 of 2017** was filed on **23<sup>rd</sup> May, 2008** at Meru Law Courts.
7. While filing Chuka **ELC 276 of 2017**, the applicant did disclose to court that there was another pending case pitting the litigants against each other over the same suit land. The result is that there exists two parallel suits, never mind if the litigants call them plaints or originating

summons, concerning the same suit land. I opine that it is undesirable to have two parallel suits concerning the same subject matter. Without imputing bad faith on the part of the applicant in Chuka **ELC 276 of 2016**, it is clear that regardless of in whose favour Chuka **ELC 94 of 2017** was decided, there would be still another extant suit, therefore, negating the conclusiveness of the court's judgment in that suit. The possibility of such a situation should be frowned upon by a court of law and should be deprecated. It should attract apposite judicial opprobrium.

8. The overriding objective of the Civil Procedure Act is to facilitate the just, expeditious, proportionate and affordable resolution of the Civil disputes governed by this Act. I opine that having two parallel suits involving the same parties and the same subject matter is antithetical to this overriding objective. A party to civil proceedings and/or advocate for such a party is under a duty to assist the court to further the overriding objective of the Civil Procedure Act.

9. I do note that the sale agreement upon which the Plaintiff/Applicant, inter alia, buttresses his claim with is dated 22<sup>nd</sup> April, 2002. Meru ELC No. 94 of 2017 was filed by the defendant/respondent herein on 23<sup>rd</sup> May, 2008. Even assuming the time required for adverse possession to accrue started running immediately after the agreement was signed by the parties, and to me such a scenario would be veritably phasmagoric, then only about 6 years would have elapsed before Chuka ELC No. 94 of 2017 was filed at Meru. As has been eruditely and definitively decided in many authorities, time to be counted for adverse possession to accrue, is interrupted and stops once a party against whom a claim for adverse possession is made moves to court to assert his claim over the suit property. The case of William Gatuhi Murathe Versus Gakuru Gathumbi, Court of Appeal, [1998] eKLR so held. It quoted Lord Selbourne, L.C. in Heath Versus Pugh (1881) (C.A) C.P.D. 345, as having opined:

***“The plaintiffs are not barred by statute, because after the institution of the Chancery suit it ceased to run against them; and by the present action they are seeking to enforce that right of possession which was for the time being given to them, indefeasibly, by the decree absolute for foreclosure in that suit.”***

10. I regretfully opine that even if this court was to allow this suit to proceed, which it will not allow as it is pellucidly an abuse of the court process, there was no way the plaintiff/applicant would have been found to have reached the threshold of the time required for adverse possession to accrue.

11. Taking into account what I have already stated, I invoke the power granted to this court by section **3A** of the Civil Procedure Act and make an order which this court deems necessary for the ends of justice to be consummated and to prevent abuse of the court process. Had hearing of Chuka ELC No. 94 of 2017 not been heard almost to conclusion, perhaps this court would have ordered a consolidation of the two suits. But this is not tenable in the present circumstances.

12. The order I make is that this suit is dismissed.

13. I award NO costs to any of the parties.

14. It is so ordered.

Delivered in open Court at Chuka this **25<sup>th</sup> day of June, 2018** in the presence of:

CA: Ndegwa

I.C. Mugo for the Applicant/Plaintiff

Nyamu Nyaga for the Defendant

**P.M. NJOROGE**

**JUDGE**