



**REPUBLIC OF KENYA**

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

**CHUKA ELC CIVIL APPEAL CASE NO. 03 OF 2018**

**FORMERLY CHUKA CM'S CIVIL SUIT NO. 150 OF 2017**

**PATRICK JEVIEW KANGA.....APPELLANT**

**VERSUS**

**GRACE KAGIGE NTWIGA.....1<sup>ST</sup> RESPONDENT**

**FESTUS GITONGA MUKIRI.....2<sup>ND</sup> RESPONDENT**

**RULING**

1. This file was brought to my chambers for admission or non admission of the apposite appeal.
2. I have perused the proceedings in the lower court and the ruling delivered by Hon. J. M. Njoroge, CM, at Chuka Law Courts. For purposes of clarity, I reproduce his ruling which he delivered on 21<sup>st</sup> February, 2018.

**RULING**

This is an application dated 18/12/2017 by way of notice of motion brought under article 40 of the constitution, section 28 (B) and 68 of the land registration Act 2012 and all other enabling provisions of the law. The plaintiff/Applicants prays for;

1. THAT this honorable court be pleased to issue an order of inhibition restricting any transfer, sale and or disposal of Land parcel number KARINGANI/MUGIRIRWA/569 pending the hearing and determination of this application and the main suit.
2. THAT status quo be maintained pending the hearing and determination of this suit.
3. THAT costs of this application be in the cause.

The application is supported by grounds and the affidavit by PATRICK JEVIEW KANGA, who depones that Parcel no. 569 is ancestral land and the respondents are holding the same in his trust and that he has lived therein for 40 years and has brought up his children, and prays that the status quo be maintained. The applicant further depones, that he has developed the land, and is likely to lose.

The respondents have opposed the application and filed both grounds of opposition and notice of preliminary objection dated 27/12/2017. In the grounds the defendant /respondent have stated that on 20/12/2017 an inhibition of similar nature by the applicant was removed by Hon. Justice R. Limo in Chuka High Court succession cause no. 131 of 2017. That the land parcels no. 569 doesn't exist and therefore doesn't exist for inhibition orders to issue. In the Preliminary objection, the respondents have stated that;

- By reason of the award in Chuka LDT No. 54 of 2003 the instant suit is Res Judicata and also by reason of the judgment in Chuka Succession cause no. 131 of 2015. The respondents' further state that by reason of the Embu HCC no. 49 of 2004 the instant suit is subjudice. The respondents pray that the application dated 18/12/2017 be dismissed with costs.

The issues to be determined are whether:-

- a) The suit is res judicata
- b) The issue is sub judice

c) Whether an order of inhibition and restriction should issue?

From the annexure the court observes that the parcel of land KARINGANI/MUGIRIRWA/569 was a subject matter in LDT case no. 3/2003. The applicant was awarded a portion of the land KARINGANI/MUGIRIRWA /1756, the District Land Dispute Tribunal's decision was later overturned by the Eastern Province Land Disputes Appeals Committee sitting at Embu on 16/6/2009, An APPEAL NO. 57/2004 GRACE KAGIGE NTWIGA AND DELFINO DAVID MURITHI VERSUS PATRICK JEVIEW KANGA, the appeals committees findings were as follows;

*“.....Patrick Jeview Kanga should get out of the land sold to Delfino David Murithi because he has the title of the shamba which he bought legally.....”*

The court issued an eviction order against the applicant on 28/7/2015 from land parcel no. 569. The High court in determining High court succession cause no. 131 of 2015, issued an order dated 21/12/2017 in which the inhibition or any other encumbrance lodged against Parcel no. 1756 by the applicant herein was ordered removed or lifted.

In other words I conclude that the issue of the applicants interest in respect of parcel no. 569 and the resultant subdivision parcels no. 1756 has been properly addressed and determined by the various courts including the High court. The applicants revival of the present application can only be termed as

a) Res judicata

b) An abuse of the court process.

This is so because, the issue of inhibition or restriction had been heard and determined by the High court. I shall therefore allow the respondent's preliminary objection dated 27/12/2017, and order the application dated 18/12/2017 dismissed with costs.

**J. M. Njoroge - CM**

**21/2/2017**

**Court**

Ruling delivered

Kijaru for applicant

Kisinga holding brief for respondents

**J. M. Njoroge - CM**

**21/2/2017**

**Court**

The parties be supplied with a copy of the ruling at their own costs.

**J. M. Njoroge - CM**

**21/2/2017**

3. Having perused all the documents apposite to this appeal, including the impugned ruling, I do consider, in terms of section 79 B of the Civil Procedure Act, that there is no sufficient ground for interfering with the Hon. Chief Magistrate's Ruling delivered on **21<sup>st</sup> February, 2017**.

4. In the circumstances, the appeal is dismissed summarily.

5. It is so ordered.

Delivered in Chambers at Chuka this **17<sup>th</sup> day of July, 2018** in the presence of:

CA: Ndegwa

**P. M. NJOROGE**

**JUDGE**