



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT CHUKA

CHUKA ELC CASE NO 226 OF 2017

DAVID KAMUNDI MURANGA..... PLAINTIFF

VERSUS

CHARLES NJAGI KANGA.....DEFENDANT

JUDGMENT

1. In his plaint dated **6th April, 2017**, the plaintiff prays for judgment against the defendant for orders that:

- a) This court be pleased to order the defendant to transfer LR. MUTHAMBI/LOWER KARIMBA/1604 to the plaintiff and default thereof this court's Deputy Registrar be directed to execute all the transfer instruments to transfer the land to the plaintiff.
- b) That this court be pleased to vacate and/or remove the caution or any inhibition on the disputed land to enable transfer to the plaintiff.
- c) Damages for breach of contract.
- d) Costs of the suit.
- e) Any further or other relief this court would deem fit to grant.

2. Vide an application by way of **Notice of Motion dated 6th July, 2018**, the plaintiff sought the following orders:

1. That the honourable court be pleased to review its decree and/or consent order dated 30th April, 2018 and correct the glaring errors on the face of it.
2. That upon review of the said decree and/or order, the honourable court to declare LP. NO. MUTHAMBI/LOWER KARIMBA/1604 as rightly and legally belonging to DAVID KAMUNDI MURANGA, the plaintiff herein in place of and / or instead of MARIKO KAMUNDE shown as 2nd defendant in the decree under review.
3. The costs of this application be costs in the cause.

3. The application has the following grounds:

- i) The decree and/or order issued on 9th May, 2018 and dated 30th April, 2018 is incapable of execution due to some mistakes or errors apparent on the face of the record.
- ii) The instant application is filed or brought in court without unreasonable or inordinate delay.

4. The application is supported by the applicant's supporting affidavit sworn on **6th July, 2018** which states:

I, DAVID KAMUNDI MURANGA of P. O. Box 336 Chuka do hereby make oath and state as follows:

1. That I am the applicant/plaintiff herein well versed with the facts of this case hence competent enough to swear this affidavit.
2. That in the year 2017, I filed the instant case against the defendant herein Mr. Charles Njagi Kanga demanding from him LP. NO. MUTHAMBI/LOWER KARIMBA/1604.

3. That the case went for hearing on 30th April, 2018 when we agreed to record a consent order whose import was to declare me as the right and legal owner of LP NO. MUTHAMBI/LOWER KARIMBA/1604 (Annexed herewith and marked DK 1 is a copy of the consent order dated 30th April, 2018).

4. That when I started executing the aforesaid consent order, I noticed glaring errors and mistakes apparent on the face of the record as follows:-

i) The names with which I instituted this case contradicted the names of the beneficiary of the decree.

ii) I am the plaintiff in the instant suit whereas the decree depicts me as 2nd defendant which is wrong.

iii) That this honourable court declare LP NO. MUTHAMBI/LOWER KARIMBA/1604 belonging to DAVID KAMUNDIH MURANGA plaintiff in place of/and or instead of MARIKO KAMUNDE shown as 2nd defendant in the decree under review.

5. That it is only fair, reasonable and just to review the said decree so as to reflect the letter and spirit of the consent order I recorded with the defendant.

6. That I therefore swear this affidavit in support of my application for review of the decree or orders dated 30th April, 2018 to enable me execute the same accordingly.

7. That all what is deposed to hereinabove are true to the best of my knowledge, belief and information.

5. When the application was heard on 25th July, 2018, the parties were granted 30 days to file another consent.

6. On 25th September, 2018, the parties proffered a consent which they asked the court to adopt as its order. The consent is dated 13th August, 2018 and takes the following form:

THE DEPUTY REGISTRAR,

CHUKA LAW COURTS,

P. O. BOX 73-60400,

CHUKA.

Dear Sir/Madam,

RE:CHUKA ELC NO. 226 OF 2017

DAVID KAMUNDIH MURANGA

VERSUS

CHARLES NJAGI M'KANGA

Kindly record the following consent agreed to by the parties herein;

BY CONSENT

1. That the Deputy Registrar be empowered to execute all conveyancing documents in respect of LR. NO. MUTHAMBI/LOWER KARIMBA/1604 to ensure that the same is transferred from MARIKO KAMUNDE to DAVID KAMUNDIH MURANGA the plaintiff herein.

2. That the Land Registrar Chuka be served for compliance.

3. That upon the compliance of prayer 1 above this matter be marked as settled and each party to bear his costs.

DATED AT CHUKA THIS 13TH DAY OF AUGUST, 2018

We consent

DAVID KAMUNDIH MURANGA

PLAINTIFF

CHARLES NJAGI M'KANGA

DEFENDANT

CHARLES NYAGA

ID NO.20687269

DEFENDANT'S SON

NICHOLAS MWITI

ID NO.25620352

DEFENANT'S SON.

7. This court has confirmed the identities of the signatories to the consent.
8. In the circumstances, the consent dated 13th August, 2018 is adopted as an order of this court.
9. This suit is marked as concluded and should be removed from the list of pending ELC cases at Chuka.
10. It is so ordered.

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

CA: Ndegwa

David Kamundi Murango – Plaintiff

Charles Njagi Kanga - Defendant

P.M. NJOROGE

JUDGE