



**REPUBLIC OF KENYA**

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

**CHUKA ELC MISCELLANEOUS CASE NO. 06 OF 2018**

**DANSON NJOGU KIBICHO.....PLAINTIFF/APPLICANT**

**VERSUS**

**KARIGI MUCHUL.....1<sup>ST</sup> RESPONDENT**

**PETER MWANGANGI MUTEA.....2<sup>ND</sup> RESPONDENT**

**ANGELINA KAITHI KANAKE.....3<sup>RD</sup> RESPONDENT**

**LYDIA KANAKE KOBIAH.....4<sup>TH</sup> RESPONDENT**

**PURITY KANINI M'NGOCI.....5<sup>TH</sup> RESPONDENT**

**RULING**

1. The plaintiff/applicant's advocate has brought this application to this court under a certificate of urgency which states as follows:

**CERTIFICATE OF URGENCY**

1. That the subject matter in this case is land measuring approximately 16.5 HA (41.25 Acres) which can be dealt with better in the environment and land court.
2. That due to ill health of the plaintiff, he feels that the Marimanti Court is very far away from his place of residence (Nairobi).
3. That the home of the defendants is too close to the Marimanti Court and due to the nature of the case and due to the volatile nature of the people living in that area the plaintiff/applicant fears for his life.
4. That this application has been brought without unreasonable delay as the Marimanti Civil Case Number 22 of 2018 is scheduled for further mention on 4.10.2018.
5. That no prejudice will be occasioned to the respondents if the orders sought are granted.

2. The application is dated **21<sup>st</sup> September, 2018** and seeks the following orders:

1. That this honourable court be pleased to order the transfer of Marimanti Civil Case Number 22 of 2018 to the Environment and Land Court at Chuka or Meru or to any other court with jurisdiction for hearing and determination of the same.
2. That costs of this application be in the cause.

3. The application has the following grounds:

- a) That the subject matter in this case is land measuring approximately 16.5 HA (41.25 Acres) which can be dealt with better in the Environment and Land Court.
- b) That due to ill health of the plaintiff, he feels that the Marimanti Court is very far away from his place of residence (Nairobi).

c) That the home of the defendants is too close to the Marimanti Court and due to the nature of the case and due to the volatile nature of the people living in that area the plaintiff/applicant fears for his life.

d) That this application has been brought without unreasonable delay as the Marimanti Civil Case number 22 of 2018 is scheduled for further mention on 4.10.2018.

4. The application is buttressed by a supporting affidavit sworn by the applicant on 21<sup>st</sup> September, 2018 which states:

**I, DANSON NJOGU KIBICHO of P. O. BOX 19676, Nairobi** in the Republic of Kenya do hereby make oath and state as follow:-

1. That I am the applicant herein and hence competent to swear this affidavit in support of my application.

2. That I instituted this case way back in the year 2004 being Embu High Court Civil Case Number 44 of 2004 (Copy of the plaint attached and marked "DNK 1")

3. That the case was thereafter transferred to the Kerugoya Environment and Land Court vide ELC No.495 of 2013 (Copy of the letter dated 1012.2014 attached and marked "DNK 2").

4. That before the case was scheduled for hearing the same was transferred back to Embu vide ELC Suit No. 216 of 2015 (Copy of mention notice dated 25.2.2015 attached and marked "DNK 3").

5. That when the same went for mention for purpose of direction on 15.2.2018, it was ordered that the case be transferred to Chuka for hearing and disposal (Copy of letter dated 20.2.2018 attached and marked "KNK 4").

6. That when the case was placed before the ELC Judge at Chuka, it was ordered that the case be transferred to Marimanti Court for hearing and disposal (Copy of letter dated 9.4.2018 attached and marked "KNK 5").

7. It is now over 14 years since I lodged my case in a court of law and I believe no justice has ever been served to me knowing that I came all the way from Nairobi, bought the same land for value and I've had no justice or benefitted from the land since then.

8. That my health condition has totally deteriorated and I am unable to make much movements.

9. That I fear for my life as the case has been transferred to Marimanti the home area of the defendants who are very violent towards me.

10. That I kindly request your honour to order that the case at Marimanti Court Civil Case number 22 of 2018 be transferred back to Chuka or Meru for hearing and disposal.

11. That I believe it's my constitutional right to be heard.

12. That I verily believe that the proposed transfer will not occasion any prejudice to the defendants/respondents herein.

13. That I swear this affidavit in support of my application for transfer of Marimanti Civil Case Number 22 of 2018 to the Environment and Land Court at Chuka or Meru.

14. That the facts deponed to herein above are true to the best of my knowledge, information and belief.

5. The applicant and his advocate did not come to court to prosecute this application. I find it necessary to give a summary ruling as it touches on the calendar of another court of law. I have, therefore, carefully considered the apposite averments.

6. I do note that the jurisdiction of the Marimanti Law Court is not disputed. The applicant says that the court at Marimanti is very far away for his convenience and that the people around the court are of a volatile nature (perhaps he means that they are violent) and that he fears for his life if the suit is heard at Marimanti. This generalized, unsubstantiated assertion constitutes undisguised anthropological (or is it tribal) profiling of denizens who live in that part of Tharaka Nithi County. This invites deserved deprecation. He also says that the suit is 14 years old and, therefore, deserves to be heard expeditiously.

7. As this application was at the *ex parte* stage, although advocates for the plaintiff and the Interested Party were in court, they were not allowed to address the court.

8. The reasons given by the applicant that the suit should be transferred to this court do not satisfy me that this suit should be transferred from Marimanti. The issue of the distance being inconvenient to him is a non-issue. What matters is the jurisdiction of the Marimanti Court which is not denied. His perception that he fears for his life if the suit is heard at Marimanti is an issue that he should report to the police and seek protection. The fact that the suit has remained unheard for **14 years** is a compelling reason that the hearing of the suit which is scheduled to be mentioned at Marimanti Law Courts on **4<sup>th</sup> October, 2018** should proceed. This matter should be heard and determined without further delay. That hearing will vindicate the applicant's constitutional right to have his suit heard expeditiously and for justice to be seen to have been done to him and to the defendants.

9. In the circumstances, this application is summarily dismissed.

10. I issue no order as to costs.

11. It is so ordered

**Delivered in open Court at Chuka this 25<sup>th</sup> day of September, 2018**

in the presence of:

CA: Ndegwa

Murango Mwenda for the Plaintiff

Ashava for the Interested Party.

**P.M. NJORGE**

**JUDGE**