



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT CHUKA**

**CHUKA ELC CASE NO 60 OF 2017**

**FORMERLY MERU ELC CASE NO.139 OF 2016**

**CHARLES IGUNA NDUYO.....1<sup>ST</sup> PLAINTIFF**

**KITHEU MUGAMBI.....2<sup>ND</sup> PLAINTIFF**

**AGNES KARIA MAKANYA.....3<sup>RD</sup> PLAINTIFF**

**VERSUS**

**GITURI PRIMARY SCHOOL (sued thro' chairman, secretary &  
treasurer of school management committee).....DEFENDANT**

**THE BOARD OF MANAGEMENT M.C.K.**

**GITURI PRIMARY SCHOOL (thro' the  
chairperson and secretary).....INTERESTED PARTY/APPLICANT**

**RULING**

1. This application is dated 9<sup>th</sup> August, 2018 and seeks the following orders:

1. That this application be certified urgent and the same be heard exparte in the first instance.
2. That there be a stay of execution of the judgment/decree entered herein and all consequential or subsequent orders pending the hearing inter-partes of this application.
3. That there be a stay of execution of the judgment/decree entered herein and all consequential or subsequent orders pending the hearing and determination of this application.
4. That the honourable court be pleased to set aside the judgment/decree entered herein and this suit be set down for hearing on merits in the normal manner.
5. That the honourable court be pleased to enjoin the Interested party/applicant herein as a defendant for purposes of defending this suit.
6. That costs be provided for.

2. It is supported by the affidavit of Francis Kamwara Mucee sworn on 9<sup>th</sup> August, 2018 which states:

1. That I am the head teacher – M.C.K. Gituri Primary School and secretary to the board of management M.C.K. Gituri Primary School well versed with the issues I am about to depone and competent to swear this affidavit.

2. That M.C.K. Gituri Primary School is a public government school founded by the Methodist Church of Kenya.
3. That Marigu Munyori is the parent association chairman of M.C. K. Gituri Primary School and he is not the parent teachers association (P.T.A) chairman. P.T.A. does not exist anymore.
4. That Margaret Kajira is the executive board member of the board of management (B.O.M) of M.C.K. Gituri Primary School and she is not a committee treasurer as alleged or at all.
5. That I first came to know of this case through the plaintiffs' application dated 12<sup>th</sup> July, 2018 when it was served at my home on the 25<sup>th</sup> July, 2018.
6. That I rushed and got in touch with Marigu Munyori and Margaret Kajira who informed me that they were not served with any documents in this suit including the said application.
7. That upon getting guidance at the Chuka Law Courts, it dawned upon us that the plaintiffs proceeded with this matter *ex parte* without informing us.
8. That it is rather unfortunate that the plaintiffs sued Gituri Primary School instead of M.C.K. Gituri Primary School and yet proceeded with the suit *ex parte* seeking orders to bind us.
9. That it is also unfortunate that the plaintiffs sued through the school management committee but failed to sue through the board of management which is the party required to be sued as it is the custodian of the school on behalf of the County Education Board as per the Basic Education Act, 2013.
10. That clearly, the plaintiffs not only sued the wrong party or a party with no capacity to be sued, the plaintiffs also failed to serve us with summons to enter appearance and pleadings in this matter.
11. That I shall urge the court to summon the plaintiffs' process server for cross examination on how he has been effecting service.
12. That I reiterate that the only documents served in this matter were the application dated 12<sup>th</sup> July, 2018 and which documents were served at my home on 25<sup>th</sup> July, 2018 and which documents were served upon Marigu Munyori and Margaret Kajira.
13. That I came to the school in the year 2013 or thereabout whilst Marigu Munyori and Maragaret Kajira have been with the Parents Association and the Board of Management for three (3) years or thereabout.
14. That we are not well versed with the history of the dispute between the plaintiffs and M.C.K. Gituri Primary School but from the records, we have established that M.C.K.Gituri Primary School is the recorded owner of P/NO.528 Turima Adj Section. (Annexed herewith please find marked "FKM" which is a record of the school's ownership).
15. That since we came to the school, we've never done any new developments and the school is as it was under the previous administration.
16. That the Interested party is the proper party for these proceedings, the Interested Party is necessary for the determination of the real matter in dispute and the Interested Party's presence is necessary to enable the court effectually and completely adjudicate and settle all questions involved in the suit.
17. That the Interested Party has a defence which raises very serious triable issues and we urge that the Interested Party be heard. (Annexed herewith please find marked "FKM 2" which is a draft defence).
18. That the failure to serve summons to enter appearance and pleadings by the plaintiffs means that the Interested party stands to be condemned unheard.
19. That all what is deponed to herein above is true to the best of my knowledge, information and belief.

3. On 30<sup>th</sup> October, 2018, the parties told the court that they had agreed that the matter be marked as settled. The consequence of this intimation is that this court's judgment delivered on 28<sup>th</sup> March, 2017 remains extant.

4. This application is marked as heard, settled and determined.

5. As the application has a veneer of Public Interest Litigation, no costs will be awarded.

6. It is so ordered.

**Delivered in open court at Chuka this 30<sup>th</sup> day of October, 2018 in the presence of:**

**CA: Ndegwa**

**Hiram Kirihi h/b Murango Mwenda for the applicant**

**Edwin Kimathi for the Respondents**

**P.M. NJORGE**

**JUDGE**