



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.....1ST PLAINTIFF

KITHETU MUGAMBI.....2ND PLAINTIFF

AGNES KARIA MAKANYA.....3RD 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 12th July, 2018 and seeks the following orders:

1. That the application be certified urgent and service be dispensed with in the first instance due to the urgency of the matter.
2. That the defendant's/Respondent's officials: the Headmaster, Mr. Mucee Kamwara, the P.T.A. Chairman Mr. Marigu Munyori and the committee treasurer Margaret Kajira be committed to civil jail for 6 months as they are in breach of the orders given in the judgment and decree dated 28th March, 2018.
3. That costs of the application be provided for.

2. It has the following ground:

1. That the defendant/respondent by itself through its officials; the Headmaster, Mr. Mucee Kamwara, the P.T.A. Chairman Mr. Marigu Munyori and the committee treasurer Margaret Kajira are in breach of the orders dated 28th March, 2018 issued by honourable P. M .Njoroge J.
2. That the defendant/respondent by itself, its officials agents, or workmen were ordered from interfering with land parcel Nos. Turima Adj Section/1803, Turima Adj Section/1804 and Turima Adj Section/1805.
3. That the headmaster, Mr. Mucee Kamwara, the P.T.A. Chairman Mr. Marigu Munyori and the committee treasurer Margaret Kajira were on the 24th January, 2018 served with certificate of costs dated 21st November, 2017 and a decree dated 22nd November, 2017, so the court orders were well within their knowledge.

4. That vide a letter dated 2nd May, 2018, the headmaster, Mr Mucee Kamwara, the chairman of the P.T.A., Mr Marigu Munyoni, and the P.T.A Treasurer, Margaret Kajira were instructed to restrain from interfering with the suit property as per the judgment and decree but they continue to be in breach of the court orders.

5. That the court further ordered that the plaintiffs/applicants be awarded the costs of the suit.

6. That the defendant/respondent by itself through its officials and agents have refused to comply with the court orders and have continued to blatantly breach the court orders.

7. That the defendant/respondent by itself through its officials and agents continue to interfere with the land parcels by removing barbed wires and uprooting posts that the plaintiffs/applicants had used to fence their plots.

8. That the defendant/respondent by itself through its agents has erected a fence round the plaintiffs/applicants plots denying them access to their plots.

9. That it is in the interest of justice that the defendant/respondent by itself through its officials; the headmaster, Mr. Mucee Kamwara, the P.T.A. Chairman Mr. Marigu Munyori and the committee treasurer Margaret Kajira be committed to civil jail.

3. The application is supported by the affidavit of Kathitu Mugambi, the 2nd plaintiff and states:

1. That I am the 2nd plaintiff/ 2nd applicant herein and I have authority of my co-applicants/plaintiffs to swear this affidavit on their behalf as well.

2. That I am the owner of land parcel number Turima Adj Section 1803.

3. That we filed a claim against the defendant/respondent vide ELC Case No. 139 of 2016 Meru.

4. That the award was given in our favour and the same was confirmed as the judgment of this honourable court on 28.03.2017 (Annexed and marked "KM 1" is a copy of the said judgment).

5. That the headmaster, Mr. Mucee Kamwara, the P.T.A Chairman Mr. Marigu Munyori and the Committee treasurer Margaret Kajira were on the 24th January, 2018 served with certificates of costs dated 21st November, 2017 and a decree dated 22nd November, 2017, so the court orders were well within their knowledge but they continue to be in breach of the orders. (Annexed and marked "KM 2" is a copy of the affidavit of service).

6. That vide a letter dated 2nd May, 2018, from our advocate on record, the chairman of the PTA, Mr. Marigu Munyori, the headmaster, Mr. Mucee Kamwara and the PTA Treasurer, Margaret Kajira, were instructed to restrain from interfering with our plots as per the judgment and decree but they continue to be in breach (Annexed and marked "KM3" is a copy of the letter).

7. That we moved to fence our plots but on the 27th day of March, 2018, the headmaster Mr. Mucee Kamwara, led a group of parents to remove barbed wires and uproot posts that we had used to fence our plot.

8. That further, on the 2nd day of My, 2018 the headmaster, Mr Mucee Kamwara, the chairman of the PTA, Mr. Marigu Munyori, and the PTA Treasurer, Margaret Kajira, led a group of parents to erect a fence round our plot thus denying us access to our plot.

9. That since the orders were issued, the defendant by itself though its officials and agents is yet to stop interfering with our land.

10. That unless the said sought orders are granted, we stand to suffer irreparable loss as the respondents continue interfering with our land.

11. That I swear this affidavit in support of our application hereof.

12. That the matters deponed to herein are true to the best of my knowledge, information and belief.

4. As ordered by the court, the alleged contemnors Francis Kamwaro Mucee, Marigu Munyori and Margaret Kajira, are present in court. The parties' advocate have confirmed that they have purged the contempt by fencing the suit land properly.

5. In the circumstances, this application is marked as settled.

6. It is so ordered.

Delivered in open court at Chuka this 30th day of October, 2018 in the presence of:

CA: Ndegwa

Edwin Kimathi for the Respondents

Hiram Kirimi h/b Murango Mwenda for the Applicants

P.M. NJORGE

JUDGE