



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT CHUKA

CHUKA ELC CASE NO 212 OF 2017

IRVINE MWENDA JAPHET.....PLAINTIFF

VERSUS

M'KANGA M'RWITO KANYINYIRO.....DEFENDANT

RULING

1. The application states that it has been brought to court under **Sections 3, 3A, 63e and Order 51 Rule 1 of the Civil Procedure Rules**. The application is dated **3rd October, 2018** and seeks the following orders:

1. That this application be certified as urgent and be heard on priority basis.
2. That this honourable court be pleased to lift the orders of inhibition and any other restriction over parcel **No. MWIMBI/CHOGORIA/4652**.
3. That the costs of this application be provided for.

2. The application has the following grounds:

- a) That the suit was determined by way of dismissal in early 2018.
- b) That the parcel of land subject to this suit is Mwimbi/Chogoria/4652.
- c) That the suit land is still encumbered and the suit has been determined.

3. The application is buttressed by an affidavit sworn by the applicant on **3rd October, 2018** which states as follows:

I, M'KANGA M'RWITO KANYINYIRO of P. O. Box 12 CHOGORIA, do hereby make oath and swear as follows:-

1. That I am the defendant/applicant herein well versed with the facts of this matter and therefore competent to make and swear this affidavit.
2. That this suit was determined in my favour by way of dismissal in early 2018.
3. That the respondent had inhibited my land being parcel No. **Mwimbi/Chogoria/4652** on **31st day of October, 2011** by way of an order issued on **2.11.2011** hereto annexed and marked "**MMK 1**" is a copy of the same.
4. That I cannot deal with my land due to the inhibition order.
5. That there being no other business in court over this case, I need my land freed from my (sic) dealing.
6. That the facts deponed to herein are true and accurate to the best of my knowledge and belief.

4. As this suit was dismissed on **7th February, 2018** meaning that any orders issued therein are automatically invalid and have been vacated by the apposite dismissal, I will allow the application. However, since the applicant was equally to blame for the dismissal of the suit, no costs will be awarded to him. Therefore the following orders are issued:

a) This application is allowed in terms of prayer 2 thereof.

b) No costs are awarded in the main suit and in this application.

5. It is so ordered.

Delivered in open Court at Chuka this 23rd day of October, 2018 in the presence of:

CA: Ndegwa

Charles Muchiri h/b Mwanzia for the defendant

P.M. NJOROGI

JUDGE