



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT CHUKA

CHUKA ELC CIVIL APPEAL CASE NO. 09 OF 2018

GRACE CIANJOKA NTHIGAI.....APPELLANT

VERSUS

IDER KEERUA.....1ST RESPONDENT

JOSELINE MWIMBI2ND RESPONDENT

HARRIET KANINI3RD RESPONDENT

RULING

1. This application is dated **18th December, 2018** and seeks orders:

1. That this application be certified urgent and service be dispensed with in the first instance and the court be pleased to grant prayer 2 herein.
2. That pending the hearing and determination of this appeal, this court be pleased to grant stay of execution of the judgment and decree of the Chief Magistrate Court Chuka Civil Suit No. 124 of 2016 issued on 21st November, 2018.
3. The cost of this application be provided for.

2. The application has the following grounds:

1. That judgment in the lower court was delivered on 21st November, 2018.
2. That the respondents are now bent on subdividing and executing the court orders of 21st November, 2018.
3. That the applicant is apprehensive that the respondents may engage services of a surveyor anytime thereby subdividing the suit land LR; Karingani/Mugirirwa/3423.
4. That if stay is not granted the applicant is bound to suffer loss and damages for her developments on the suit land will be demolished and destroyed.
5. That the applicant is apprehensive that the one acre that the plaintiff/respondents were awarded by the court may be curved from the applicant's parcel of land LR; Karingani/Mugirirwa/3423.
6. That the applicant stands to suffer immense loss and ought to be rendered landless and destitute for she will be left with a very small piece of land.
7. That the applicant holds LR; Karingani/Mugirirwa/3423 absolutely and does not hold the same in trust for anybody.
8. That the orders sought are the best and most apt in the circumstances.
9. That no party stands to suffer any prejudice in the event the orders sought are granted for they will meet the ends of justice.

3. The application is supported by the affidavit of Grace Cianjoka Nthigai sworn on **18th December, 2018** which states:

I, GRACE CIANJOKA NTHIGA a resident of Chuka in Tharaka Nithi County and of Post Box Number 52-60400 Chuka hereby make oath and swear as follows:

1. That I am an adult female of sound mind hence competent to swear this affidavit.
2. That I am the registered owner of the property known as L.R. No. Karingani/Mugirirwa/3423.
3. That judgment in this suit was delivered on 21st November, 2018.
4. That the respondents are now bent on subdividing and executing the court orders of 21st November, 2018.
5. That I was condemned unheard which is an affront to the principles of natural justice that a person should not be condemned unheard.
6. That I am apprehensive that the respondent may engage services of a surveyor anytime thereby subdividing the land.
7. That if stay is not granted I am bound to suffer loss and damages for her developments on the suit land will be demolished and destroyed.
8. That I am apprehensive that the one acre that the plaintiff/respondents were awarded by the court may be curved from the applicant's parcel of land LR; Karingani/Mugirirwa/3423.
9. That I stand to suffer immense loss and ought to be rendered landless and destitute for she will be left with a very small piece of land.
10. That I hold LR; Karingani/Mugirirwa/3423 absolutely and does not hold the same in trust for anybody.
11. That the orders sought are the best and most apt in the circumstances.
12. That no party stand to suffer any prejudice in the event the orders sought are granted for they will meet the ends of justice.
13. That what I have deponed to herein above is true to the best of my knowledge save to information sources whereof have been disclosed and matters deponed to on belief the grounds whereupon have been given.

4. I have perused the pleadings and heard the applicant's advocate. At this exparte stage, I issue the following orders:

- a) Prayer 2 is granted pending hearing of this application.
- b) The applicant is ordered to deposit with court the sum of Kshs.50,000/= as deposit for security within the next 14 days.
- c) This application should be served upon the respondents within the next 10 days.
- d) Interpartes hearing on **3.4.2019**

Delivered in open Court at Chuka this **19th day of December, 2018** in the presence of:

CA: Ndegwa

Dennis Muthomi for the appellant/applicant

P.M. NJOROGE

JUDGE