



**REPUBLIC OF KENYA**

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

**CHUKA ELC CASE NO. 15 OF 2018**

**DIONECIA CIANDEKE.....PLAINTIFF**

**VERSUS**

**NDURURU NYAGA.....DEFENDANT**

**RULING**

1. This application is dated 13<sup>th</sup> December, 2018 and seeks orders:

1. That this application be certified as urgent and its service be dispensed with in the first instance.

2. That the honourable court be pleased to grant temporary orders of injunction restraining the defendant/respondent his agents, employees and or servants from selling, transferring or however disposing off that parcel of land known as Karingani/Ndagani/294 or its subsequent sub divisions known as Karingani/Ndagani/4204, 4205, 4206, 4207, 4208, 9554, 9555, 9556, 9557, 9558, 9559, 9560, 9561, 9562, 9563, 9564 & 9565 and Karingani/Ndagani/1046 and any subsequent subdivisions (hereinafter referred to as the 'property' pending the hearing and determination of this application.

3. That the defendant/respondent his agents, employees and or servants be restrained by a permanent injunction from selling, transferring or however disposing off that parcel of land known as Karingani/Ndagani/294 or its subsequent subdivisions known as Karingani/Ndagani/4204, 4205, 4206, 4207, 4208, 9554, 9555, 9556, 9557, 9558, 9559, 9560, 9561, 9562, 9563, 9564, & 9565 and Karingani/Ndagani/1046 (hereinafter referred to as the 'property') pending the hearing and determination of the main suit.

4. That costs of this application be provided for.

2. The application has the following grounds:

a) That the suit properties being parcel of lands known as Karingani/Ndagani/294 or its subsequent sub divisions known as Karingani/Ndagani/4204, 4205, 4206, 4207, 4208, 9554, 9555, 9556, 9557, 9558, 9559, 95560, 9561, 9562, 9563, 9564, 9565 and Karingani/Ndagani/1046 is (sic) at risk of being sold by defendant/respondent to the detriment of the plaintiff/applicant as they are Trust lands.

b) That sometimes in 1994 the defendant/respondent, fraudulently, illegally, un-procedurally, through a corrupt scheme, caused Karingani/Ndagani/294 to be registered in his names.

c) That the properties forms (sic) part and parcel of Trust properties and there is a real danger of her property being sold by the defendant/respondent herein pending the hearing and determination of this application and the main suit. Should the defendant not be restrained from selling, transferring or howsoever disposing the property.

d) That the plaintiff/applicant has an arguable case with a high probability of success.

e) That it is the wider interest of justice that the orders sought herein be granted.

3. The application is supported by the affidavit of Dionecia Ciandeke sworn on 13<sup>th</sup> December, 2018 which states:

I, DIONECIA CIANDEKE a resident of Chuka and of Post Office Box 15-60400 Chuka in the Republic of Kenya do hereby make oath and states as follows:

1. That I am an adult female of sound mind and the plaintiff/applicant herein thus competent to swear this affidavit.

2. That I am the daughter of one Nkoroi M'Makanya born of his wife one Joyce Ciamwonge. Nyaga Nkoroi alias Njeru Nyaga Itugura the step-father to the defendant is my elder half brother born of my father's 1<sup>st</sup> wife one Ciankuga Nyaga.

3. That my father married my mother after the death of his 1<sup>st</sup> wife, and it is her who gathered and walked the boundaries of the suit-lands in their original form to wit L.R.Karingani/Ndagani/294 & 1046. My mother was aided by father's clan Ibiga Na Thona, since women did not own identity cards, my mother caused the said land to be registered in the names and aliases of my half brother who resided in Embu with his two wives in the year 1976.

4. That the suit land Karingani/Ndagani/294 was my father's matrimonial home, it is where my parents are buried, it is the place I was born and grew up calling home and my nieces and nephews claiming through me live on the aforesaid parcel of land.

5. That the defendant who never set foot in our land and being the step son to my brother, fraudulently caused his name to be registered as owner of L.R. Karingani/Ndagani/294 in the year 1994, claiming that the initial name of registration Njeru Nyaga was his common name which claim was fraudulent, unbelievable and intended to hoodwink as the name was his step father's moniker given to my half brother by my mother who bore no sons and who caused the said entry into the register (A copy of the green card is hereto attached and marked 'd c1').

6. That to further prove that the defendant is a fraudster in originating summons No. 127 of 1996 at the High Court in Meru, the defendant swore an affidavit clearly indicating that Njeru Nyaga was a stranger to him and correctly referred to himself as Ndururu Nyaga. (A copy of the green card is hereto attached and marked 'D C2').

7. That I will be disinherited and with no place to reside on by other dependants of the suit land if the orders sought herein are not granted as the defendant is hell bent on selling off the parcel herein.

8. That no prejudice will be occasioned to the defendants/respondents (sic) if the orders sought herein are granted.

9. That I have an arguable case with a high probability of success.

10. That I stand to suffer irreparable loss and damage if the suit lands are not inhibited and the suit will be rendered merely academic and overtaken by events should the defendants/respondents not be restrained from offering for sale or howsoever disposing off or transferring the said property to a third party.

11. That the intention of the registration by my mother was for customary trust with intergenerational Equity in mind.

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

4. Having perused the pleadings I find that the applicant has established an arguable basis for the granting of prayer 2 in the application. This court's recess will commence in a few days. Thereafter, the judge will be on leave until 20<sup>th</sup> March, 2018. It is important to preserve the suit property. Therefore, prayer 2 will be granted in the interest of justice, in accordance with section 63 (e) of the Civil Procedure Act. The matter will not be certified urgent BUT will be heard on priority basis.

5. I issued the following orders

a) Matter is **NOT** certified urgent but will be heard on priority basis.

b) Prayer 2 is granted in terms of section 63(e) of the Civil Procedure Act pending hearing of this application and an order of inhibition is issued against all the parcels of land mentioned in prayer 2.

c) The application is to be properly served upon the defendant.

d) The application is to be **heard** on **2<sup>nd</sup> April, 2019**

6. It is so ordered.

**Delivered in open Court at Chuka this 17<sup>th</sup> day of December, 2018 in the presence of:**

CA: Ndegwa

Kirimi for the plaintiff

**P.M. NJOROGE**

**JUDGE**