



**REPUBLIC OF KENYA**

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

**CHUKA ELC CASE NO. 10 OF 2018**

**BUNDI KIRAGU.....APPLICANT**

**VERSUS**

**BENJAMIN COLLINS MATI.....1<sup>ST</sup> RESPONDENT**

**GERALD NYANGI WILSON.....2<sup>ND</sup> RESPONDENT**

**RULING**

1. This application has a certificate of urgency. The application is not certified urgent but will be heard on priority basis.
2. The application seeks the following orders:
  1. That the instant application be certified urgent and the same be heard exparte in the first instance and exparte orders be granted in terms of prayer 2.
  2. That the court be pleased to issue an inhibition order against LR; Magumoni/Mukuuni/303 or its subdivisions LR; Magumoni/Mukuuni/3625 and LR; Magumoni/Mukuuni/3626 inhibiting all dealings on the land until the instant application is heard and determined.
  3. That pending the hearing and determination of the main suit herein an inhibition order against LR; Magumoni/Mukuuni/303 or its subdivisions LR; Magumoni/Mukuuni/3625 and LR; Magumoni/Mukuuni/3626 be issued inhibiting any subdivision, sale, transfer, mortgage pending the hearing and determination of the instant suit.
  4. Cost of this application be provided for.
3. The application has the following grounds:-
  - a) That the applicant has been on a portion of LR; Magumoni/Mukuuni/303 for a long period now.
  - b) That the applicant strongly believes that he has attained a title over a portion of LR; Magumoni/Mukuuni/303 measuring 1.00 acres.
  - c) That the applicant has made use of this acre for a long time now.
  - d) That to the applicant's knowledge and information the 2<sup>nd</sup> defendant has a court order giving him 10 acres out of LR; Magumoni/Mukuuni/303.
  - e) That the applicant is aware that other persons who claim their respective portions will be affected if the 2<sup>nd</sup> defendant excises 10 acres without putting into account that the land parcels are being occupied by other persons and their interest must be catered for.
  - f) That the court should intervene and order that subdivisions of LR; Magumoni/Mukuuni/303 must be carried diligently so as they do not interfere with the peaceful and uninterrupted occupation and use of one acre out of LR; Magumoni/Mukuuni/303.
  - g) That the 2<sup>nd</sup> respondent should wait until the instant suit is heard and determined so that he gets his own portion.
  - h) That the applicant is made to understand that the 1<sup>st</sup> and 2<sup>nd</sup> respondents have caused the subdivision of the suit and LR;

Magumoni/Mukuuni/3625 and LR; Magumoni/Mukuuni/3626 and it is clear that the portion is measured in a manner that it affects the other persons land parcels.

i) That substantive justice of this case demands that an inhibition order be issued against land parcel LR; Magumoni/Mukuuni/303 or its subdivisions to wit LR; Magumoni/Mukuuni/3625 and LR; Magumoni/Mukuuni/3626.

4. The court has been informed that the applicant's advocate, Mr. I.C. Mugo, is sick and has been hospitalized. I agree that the order of inhibition as prayed for may be necessary, in order to preserve the suit property, on interim basis until this application is heard on 2<sup>nd</sup> April, 2019. This order will be issued in terms of section 63(e) of the Civil Procedure Act.

5. In the circumstances, prayer 2 in the application is granted on an interim basis pending inter partes hearing of this application.

6. Costs shall be in the cause.

Delivered in open Court at Chuka this **5<sup>th</sup> day of December, 2018** in the presence of:

CA: Ndegwa

Muthomi Gitari h/b I.C. Mugo for the applicant

**P.M. NJOROGE**

**JUDGE**