



**REPUBLIC OF KENYA**

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

**CHUKA ENVIRONMENT AND LAND CASE NO. 62 OF 2017**

**FORMERLY MERU ENVIRONMENT AND LAND CASE NO. 104 OF 2015**

AGNES MUTHONI NYAGA.....1<sup>ST</sup> PLAINTIFF

EVRIKER KARIMI NKARI.....2<sup>ND</sup> PLAINTIFF

HELLEN NKATHA NKARI.....3<sup>RD</sup> PLAINTIFF

CHRISTINE KANJIRU NKARI.....4<sup>TH</sup> PLAINTIFF

VERSUS

ALICE C. ALEXANDER.....1<sup>ST</sup> DEFENDANT

ALBERT MUGENDI NKARI.....2<sup>ND</sup> DEFENDANT

FRANKLINE KIRIMI NKARI.....3<sup>RD</sup> DEFENDANT

PETER MURIMI.....4<sup>TH</sup> DEFENDANT

JOLINE MUTHONI GACHUNKI.....5<sup>TH</sup> DEFENDANT

**RULING**

1. This ruling concerns 2 applications. The 1<sup>st</sup> one was filed by the plaintiff and is dated 11.11.2015. it seeks the following orders:

1. That the honourable court be pleased to certify this application urgent owing to its urgent nature, hear the same exparte in the first instance and issue orders accordingly.

2. That the honourable court be pleased to issue a temporary order of injunction restraining the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> defendants, their servants, agents, employees, assignees and/or anybody else acting on their behalf from selling, disposing off and/or in whichever way from dealing with land parcels **Nos.Karingani/Ndagani/8994, 8995 and 8996** pending the hearing and determination of this suit.

3. That pending the hearing and determination of this application interparties, honourable court be pleased to issue a temporary order of injunction restraining the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and the 5<sup>th</sup> defendants, their agents, employees, assignees and/or anybody else acting on their behalf from selling, disposing off and/or in whichever manner dealing with Land parcel Nos. **Karingani/Ndagani/8994, 8995 and 8996** pending the hearing and determination of this application interparties.

4. That the honourable court be pleased to issue a temporary order of injunction restraining the 4<sup>th</sup> and 5<sup>th</sup> defendants, their servants, agents, assignees and/or anybody else acting on the (sic) behalf from trespassing, entering, remaining therein, fencing, cultivating and/or in whichever manner dealing with any part of Land Parcel Nos. **Karingani/Ndagani/8994, 8995 and 8996** pending the hearing and determination of this suit.

5. That pending the hearing and determination of this application interparties, the honourable court be pleased to issue a temporary order of injunction restraining the 4<sup>th</sup> and 5<sup>th</sup> defendants, their servants, agents, employees, assignees and/or anybody else acting on their behalf from trespassing, entering, remaining therein, fencing, cultivating and/or whichever way from dealing with Land Parcel Nos. **Karingani/Ndagani/8994, 8995 and 8996** pending the hearing of this application interparties.

6. That the honourable court be pleased to issue an order of inhibition against Land Parcel Nos. **Karingani/Ndagani/8994, 8995 and 8996** pending the hearing and determination of this application interparties and thereafter until the further orders of this honourable court.

7. That the orders to be issued by the honourable court herein be served upon the O.C.S, Chuka Police Station to ensure compliance.

8. That the honourable court be pleased to issue penal notice for non compliance of any court orders to be issued herein upon service.

9. That the costs of this application be provided for and the same be borne by defendants/respondents.

2. The application is supported by the affidavit of **AGNES MUTHONI NYAGA** and has the following grounds:

a) The original Land Parcel No. **Karingani/Ndagani/231** was a family land and was registered in the names of **M'Moga M'Mwira – deceased**.

b) Pursuance to Meru Succession Cause NO.230 of 1995 the said Land Parcel No. **Karingani/Ndagani/231** was subdivided into four (4) portions namely **Land Parcel NOs.4758, 4759, 4760 and 4761**. Land **Parcel Nos. Karingani/Ndagani/4758** was registered in the name of the 1<sup>st</sup> defendant in trust for the plaintiffs, the 2<sup>nd</sup> and 3<sup>rd</sup> defendant respectively whereas the other three (3) land parcels were registered as follows:-

i) Land parcel Nos. **Karingani/Ndagani/4759** and **4761** were registered with **Kinyua Eliphas Njoka** and **Justus Gatari Eliphas** respectively who are cousins to the plaintiffs, the 2<sup>nd</sup> and the 3<sup>rd</sup> defendants respectively.

ii) Land parcel No. **Karingani/Ndagani/4760** was registered with **Harriet Ciakaura Njeru** who is the **aunt** to the plaintiffs, the 2<sup>nd</sup> and the 3<sup>rd</sup> defendants respectively.

c) The plaintiffs herein together with the 2<sup>nd</sup> and 3<sup>rd</sup> defendants are children of 1<sup>st</sup> defendant.

d) Without the consent and/or permission of the plaintiffs/applicants, the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> defendants

secretly colluded and fraudulently caused Land Parcel No. **Karingani/Ndagani/4758** to be subdivided into three (3) portions namely **Karingani/Ndagani/8994**, **Karingani/Ndagani/8995** and **Karingani/Ndagani/8996** and are now in the process of selling and/or disposing off some parts of the said parcels of land to the 4<sup>th</sup> and 5<sup>th</sup> defendants.

e) The plaintiffs have learnt that the sole purpose of secretly and fraudulently sub dividing Land Parcel **Karingani/Ndagani/4758** was purely to ensure that the plaintiffs/applicants do not get a share of the family land, to wit Land Parcel No. **Karingani/Ndagani/4758**.

f) The plaintiff/applicants are entitled to equal shares of Land Parcel No. **Karingani/Ndagani/4758** together with 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> defendants.

g) Because Land Parcel No. **Karingani/Ndagani/4758** was family land, the same was not available for subdivision with the intention of denying the plaintiffs/applicants their interest and/or rightful share of the said parcel of land.

h) It is only just and fair that the plaintiffs/applicants be granted orders sought herein to preserve their rights and interest over the suit lands.

i) No prejudice will be occasioned to the defendants if the orders sought herein are granted because in any event, the 2<sup>nd</sup> and 3<sup>rd</sup> defendants are not registered owners of the said parcels of land and they have no title over the said parcels of land whereas the 4<sup>th</sup> and 5<sup>th</sup> defendants could not purport to buy the suit lands from the 2<sup>nd</sup> and 3<sup>rd</sup> defendants who have no legal capacity to sell and/or dispose off the suit lands to them.

j) Unless the orders sought herein are granted, the plaintiffs/applicants stand to suffer irreparable loss.

k) It's only just and fair that the orders sought herein by the plaintiffs/applicants be allowed.

3. The 2<sup>nd</sup> application is dated 20<sup>th</sup> April, 2016 and seeks orders:

1. That interim orders issued by this honourable court on 12<sup>th</sup> November, 2015 be discharged, varied and/or set aside.

2. That cost of this application be provided for.

4. The application is supported by the affidavit of Frankline Kirimi Nkari and has the following grounds:

1. That the plaintiffs/respondents obtained interim orders exparte on 12<sup>th</sup> November, 2015.

2. That the plaintiffs/respondents have refused to prosecute the application dated 11<sup>th</sup> November, 2015

3. That sixty days have lapsed since the said application was filed.

4. That interim relief granted is too wide and open to abuse.

5. On 23.2.2017 the parties requested the court to have the 2 applications marked settled but the order of inhibition against the suit lands parcel Nos. **Karingani/Ndagani/8994**, **8995** and **8996** to remain.

6. The two applications are withdrawn and it is ordered that an inhibition be placed against Land Parcel Nos. **Karingani/Ndagani/8994**, **8995** and **8996** until this suit is heard and determined.

7. All parties to fully comply with order 11, CPR, within 30 days of today.

8. Plaintiffs to serve any parties not present in court today with the orders issued by the court within 10 days of today.

9. Hearing of main suit on 23.3.2017.

**Delivered in open court at Chuka this 23<sup>rd</sup> day of February, 2017**

in the presence of:

CA: Ndegwa

Ochieng Owiti h/b Kiogora Arithi for plaintiffs

Kijaru for 2<sup>nd</sup> and 4<sup>th</sup> defendants

1<sup>st</sup> and 3<sup>rd</sup> defendants absent

**P.M. Njoroge**

**Judge**