



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT CHUKA

CHUKA ELC CASE NO 60 OF 2017

FORMERLY MERU ELC CASE NO.139 OF 2016

CHARLES IGUNA NDUYO.....1ST PLAINTIFF

KITHETU MUGAMBI.....2ND PLAINTIFF

AGNES KARIA MAKANYA.....3RD PLAINTIFF

VERSUS

GITURI PRIMARY SCHOOL (SUED THRO' CHAIRMAN, SECRETARY

& TREASURER OF SCHOOL MANAGEMENT COMMITTEE....DEFENDANT

JUDGMENT

1. In this matter the defendant had not entered an appearance or filed a defence within the stipulated time. The plaintiffs', as a result, sought judgment in default of a defence.

2. The plaintiffs were heard on 7.3.2017.

3. PW1, Charles Iguna Nduyo, the 1st plaintiff, gave evidence that he came from Turima Location, Tharaka South Sub County. He testified that he was a Senior Chief, in charge of Turima Location. He told the court that the defendant, through its management committee had encroached upon his land. He asked the court to adopt his witness statement dated 22.8.2016 as his evidence in this suit and as exhibit 1. He also asked the court to admit his bundle of documents as exhibit 2.

4. PW1 also provided to court the consent of the District Lands and Settlement Officer (DLASO) allowing him to file this suit as required by the law. He also referred the court to a document in his bundle of documents which is a letter through which his advocates, Mwanzia & Co. Advocates, had warned the plaintiff not to interfere with his land failing which he and the other 2 plaintiffs would institute legal proceedings.

5. He asked the court to permanently restrain the defendant from interfering with his land as per the main prayer in the plaint.

6. PW2, Kithetu Mugambi, asked the court to adopt his statement dated 15.8.2016 and filed on 22.8.2016 as his evidence in this suit. He asked the court to make reference to the documents he had proffered and grant him orders as sought in the plaint.

7. PW3, Agnes Karia Makanya, asked the court to adopt her witness statement dated 15.8.2016 and filed on 22.8.2016 as her evidence in this suit. She asked the court to take into account the documents she had filed in this matter when making its determination. She particularly asked the court to look at document 2 which is a grant of letters of administration appointing her an administrator of her husband's estate. She also brought to the attention of the court the DLASO's consent for her to file this suit.

8. I have carefully considered the pleadings and the documents filed by the parties. I have also very carefully considered the oral evidence proffered by the parties.

9. I find that the plaintiffs have proved their case against the defendant.

10. Consequently, judgment is entered for the plaintiffs against the defendant as follows:

(a) An order of permanent injunction is issued restraining the defendant by itself, its officials, agents, or workmen from interfering with parcel Nos. TURIMA ADJUDICATION SECTION/1803, TURIMA ADJUDICATION SECTION/1804 and TURIMA ADJUDICATION SECTION/1805.

(b) Costs are awarded to the plaintiffs.

11. It is so ordered.

Delivered in open court at Chuka this 28th day of March, 2017 in the presence of:

CA: Ndegwa

Miss Kaaria h/b Murango Mwenda for the plaintiffs

P. M. NJOROGE,

JUDGE.