



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT CHUKA**

**CHUKA ELC CASE NO 11 OF 2017**

**FORMERLY MERU ELC CASE NO.8 “B” OF 2016**

N’BUYANGA M’MUKURIMBA.....PLAINTIFF

VERSUS

JAPHET KITHUURE RUGURU.....DEFENDANT

**RULING**

1. This ruling concerns an application dated 8<sup>th</sup> March, 2016.
2. The application seeks orders:-
  1. That this application be certified as extremely urgent and service of the same be dispensed with.
  2. That the honourable court be pleased to issue an order of temporary injunction against the defendant restraining him by himself, his servants, agents, employees or anyone acting on his behalf from/trespassing/interfering with land parcel in Kathangacini measuring around 100 acres pending the hearing and determination of this application.
  3. That the honourable court be pleased to issue an order of temporary injunction against the defendant restraining him by himself, his servants, agents, employees or anyone acting on his behalf from/trespassing/interfering with land parcel in Kathangacini measuring around 100 acres pending the hearing and determination of this suit.
  4. Costs and interest of the application be provided
3. The application is supported by the affidavit of N’BUYANGA M’MUKURIMA and has the following grounds.
  1. That I am the plaintiff/applicant herein and the bonafide owner of land parcel Kathangacini measuring around 100 acres.
  2. That the respondent has without any colour of right occupied my parcel in the pretext that the same belongs to them (sic).
4. On 10.3.2016, when the applicant was slated to prosecute his case, he did not turn up.

5. On 21.3.2016 when the parties were to be heard interpartes, the applicant had not served the defendant/respondent.
6. On 2.5.2016, once again the parties did not come to court for interpartes hearing.
7. The parties had been directed to come to court for directions today. A notice had been served upon them by the court and I see no reason why they should not have been in court.
8. I find that the application dated 8<sup>th</sup> March, 2016 merits dismissal. It is hereby dismissed.
9. In his plaint, the plaintiff prays for:
  1. A declaration that the plaintiff is entitled to exclusive and unimpeded right of possession of the parcel of land in Kathangacini measuring approximately one hundred acres that is unsurveyed and occupied under indigenous land tenure at Kathangacini Location, Tharaka North District.
  2. General damages for trespass.
  3. Costs of this suit together with interest thereon at such rate and for such period of time as this Honourable Court may deem fit to grant.
  4. Any such other or further relief as this Honourable Court may deem appropriate.
10. For indigenous tenure to become justiciable there are processes prescribed by the Land Adjudication Act, the Land Consolidation Act and the Community Land Act. The plaintiff does not indicate that the land he is claiming has been subjected to the processes required by any of the 3 Acts.
11. Article 61(2) of the Constitution of Kenya classifies land as public, community or private.
12. Article 64 of the Constitution of Kenya decrees that private land consists of:
  - a) Registered land held by any person under a freehold tenure;
  - b) Land held by any person under leasehold tenure;
  - c) Any other land declared private land under an Act of Parliament.
13. I opine that the land claimed by the plaintiff does not fall under the ambit of the 3 categories pellucidly delineated by the Constitution. In a more direct statement, unadjudicated land, unless it is subjected to a process leading to a known tenure is not recognized under the 3 categories of private land recognized by the Supreme law of the land.
14. The Land Adjudication Act provides a procedure for ascertainment and recording of rights and interests in Trust Land.
15. The Land Consolidation Act provides for the ascertainment of rights and interests in, and for Consolidation of Land in the special areas. It also provides for registration of title and of transactions and devolution affecting such land and other land in special areas.
16. The Community Land Act contains provisions apposite to community land.
17. It is veritably pellucid that the plaintiff does not claim that his land has been subjected to the processes contemplated by either the Land Adjudication Act, the Land Consolidation Act, or the Community Land Act.
18. As determined in *Meru ELC No. 198 of 2016, eKLR, M'ITHANA M'THIRINGA VERSUS*

**MURITHI M'AMBURUBUA**, this court has no jurisdiction to usurp the powers of institutions created by the Land Adjudication Act and the Land Consolidation Act, which are creatures of the legislature. As this court opined in the above cited case;

***“If the court attempts to do so, this would render the concerned institutions superfluous and as dead as dodos. This can never be the intention of the law.”***

19. The Supreme Court of Kenya in **Civil Application No. 2 of 2012 (SK Macharia & Another Versus KCB & 2 Others** gave guidance on the area of Jurisdiction. It stated as follows:

***“A Court’s Jurisdiction flows from either the Constitution or legislation or both. Thus a court of law can only exercise jurisdiction as conferred by the constitution or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law. We agree with counsel for the 1<sup>st</sup> and 2<sup>nd</sup> respondents in his submissions that the issues as to whether a court of law had jurisdiction to entertain a matter before it, is not one of mere procedural technicality; it goes to the very heart of the matter, for without jurisdiction, the court cannot entertain any proceedings.....”***

20. In the Classic Case of “The MV Lilian “S”, [1989] KLR I, Court of Appeal, Justice Nyarangi, JA, opined as follows:

***“Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law downs tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.”***

21. I find that this court has no jurisdiction to handle matters concerning unadjudicated land unless when dealing with questions concerning the integrity of the adjudication process.

22. In the circumstances, I issue the following orders:

1. This application is dismissed.
2. This suit is dismissed in its entirety.
3. No costs are awarded.

23. It is so ordered.

**Delivered in open court at Chuka this 9<sup>th</sup> day of March, 2017**

in the presence of:

CA: Ndegwa

Parties absent

**P.M. NJOROGE**

**JUDGE**