



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT CHUKA

CHUKA ELC [CA] CASE NO 128 OF 2017

FORMERLY MERU ELC [CA] CASE NO. 22 OF 2013

NJERU MUGERA..... APPELLANT

VERSUS

JEMIMAH NKIROTE NJAGI.....RESPONDENT

RULING

1. This application by the respondent/applicant is dated 6th July, 2017 and seeks orders:

1. THAT the application be certified extremely urgent and it be heard ex-parte on priority basis.
2. THAT the District (county) land registrar, Chuka and the District (county) surveyor, Chuka, be empowered and authorized to dispense with the necessity of production of the original title deed over **L.R. MAGUMONI/MUKUUNI/313**, in implementing the order issued herein on **17.05.2016**.
3. THAT costs of the application be provided for.

2. The application is supported by the affidavit of JEMIMAH NKIROTE NJAGI and has the following grounds:

- (i) THAT earlier it was ordered that the suit land be sub-divided and shared equally between the parties.
- (ii) THAT in June, 2017, the suit land was surveyed and sub-divided into two equal portions under armed security, as ordered by the court on 12.5.2016.
- (iii) THAT the appellant/respondent has declined to surrender the original title deed so that the court order can be implemented fully.
- (iv) THAT the appellant/respondent is aggressively depleting all the trees on the suit land using 4 power-saws so that when I will possess my share, it shall be bare.
- (v) THAT the final decision in this appeal and the subsequent orders have never been challenged.

3. During hearing on 25.7.2017, the applicant Jemimah Nkirote Njagi told the court that she wanted her application allowed because he appellant, Njeru Njagi had refused to obey court orders.

4. The Appellant/Respondents' advocate told the court that the parties had before the OCS Chuka on 26.6.2017 agreed that the appellant/respondent would be given 90 days to remove his property from the side that was surveyed to belong to the applicant. He also said that the appellant/respondent was willing to transfer the suit land to the applicant within 60 days. He termed the applicant a liar.

5. The applicant was evasive. She told the court that the appellant/respondent had sent people to kill her and to harass her. She even attempted to deny what she owned upto later. I find that she is not an honest person and that she is predisposed to creating stories. She was unable to substantiate any of her claims. I note that in her pleadings she had hidden material facts from the court, including the session the parties had at the office of the OCS Chuka on 26.6.2007.

6. In the circumstances her application, and specifically her prayer 2, is dismissed.

7. It is so ordered as follows:

1. Mr. Njeru Mugeru, the appellant/respondent as undertaken by his advocate, Mr. Kirimi, to transfer land to the applicant, JEMIMAH NKIROTE NJAGI, as per court orders within 60 days of today.

2. Mr. NJERU MUGERA, the appellant/respondent, as he and his advocate have undertaken, to remove his property including crops from the portion of the suit land which now belongs to the applicant.

3. Any further frivolous applications from the applicant will not be entertained.

4. The applicant, JEMIMAH NKIROTE NJAGI, to meet transfer fees and attendant costs.

5. Parties are ordered to come to court on **27.9.2017** to make a progress report.

8. It is so ordered.

Delivered in open court at Chuka this **25th day of July, 2017** in the presence of:

CA: Ndegwa

Kirimi for Appellant/Respondent

Jemimah Nkirote Njagi - Applicant

P. M. NJOROGE

JUDGE