



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT CHUKA

CHUKA ELC CASE NO 262 OF 2017

JUSTUS MURUJA MUSA.....PLAINTIFF

VERSUS

FESTUS M'METHA NJAU alias FESTUS METHA NJAU.....DEFENDANT

RULING

1. This application is dated 15.6.2017 and seeks orders:

1. THAT the application be certified urgent and it be heard on priority basis.

2. THAT pending *inter-partes* hearing of the application, an order of inhibition be issued, inhibiting registration of any dealings over L.R. Nos. MUTHAMBI/L. KANDUNGU/1338, 1339 and 990 measuring about 0.40 hectares, 0.51 hectares and 1.43 hectares respectively.

3. THAT pending *inter-partes* hearing of the application, a temporary injunction be issued restraining the defendant/respondent and his family members, representatives, employees, servants, agents and anybody else acting or claiming for, through or on his behalf, or at his behest, direction or instructions, from entering into, trespassing onto, evicting the plaintiff from, or whatsoever interfering with the plaintiff's quiet, peaceful, undisturbed and uninterrupted actual and exclusive possession, occupation, cultivation, development, user and enjoyments of L.R. Nos. MUTHAMBI/L.KANDUNGU/1338, 1339 and 990 measuring about 0.40 hectares, 0.51 hectares and 1.43 hectares respectively.

4. THAT pending hearing & determination of the suit or until further court orders, an order of inhibition be issued, inhibiting registration of any dealings over L.R. Nos. MUTHAMBI/L. KANDUNGU/1338, 1339 and 990 measuring about 0.40 hectares, 0.51 hectares and 1.43 hectares respectively.

5. THAT pending hearing and determination of the suit or until further court orders, a temporary injunction be issued restraining the defendant/respondent and his family members, representatives, employees, servants, agents and anybody else acting or claiming for, through or on his behalf, or at his behest, direction or instructions, from entering into, trespassing onto, evicting the plaintiff from, or whatsoever interfering with the plaintiff's quiet, peaceful, undisturbed and uninterrupted actual and exclusive possession, occupation, cultivation, development, user and enjoyments of L.R. Nos. MUTHAMBI/L. KANDUNGU/1338, 1339 and 990 measuring about 0.40 hectares, 0.51 hectares and 1.43 hectares respectively.

6. THAT costs of the application be provided for.

2. The application is supported by the affidavit of Justus Muruja Musa and has the following grounds:

1. THAT the respondent fraudulently and unduly influenced registration of the suit lands to him on 28.01.2014, long before the outcome of the appeal to the minister on 10.05.2017.
2. THAT the respondents got registered over the suit lands fraudulently.
3. THAT the respondent intends to forcibly evict the applicant from the suit lands, which he has never utilized.
4. THAT the applicant and his family have lived and utilized the suit lands since 1970 and 1986 to-date, and have nowhere else to live or farm on.
5. THAT the suit lands belong to the plaintiff as inheritance/gifts.
6. THAT the respondent is a wealthy and influential man, being a retired headmaster and a former land committee member and so, the applicant cannot resist him or counter his aggression.
7. THAT if the applicant and his family are forcibly evicted as threatened, their properties shall be vandalized and they be rendered homeless and vagabonds, thereby causing them to suffer irreparable harm, loss, damage, prejudice and injustice, since they attach profound economic and sentimental value into the suit lands, which cannot be quantified in monetary terms.

3. On 19.7.2017 the parties by consent asked the court to deem as admitted the defendant's replying affidavit deposed on 18.7.2017 and his defence filed on 19.7.2017. Both are deemed as having been properly filed.

4. On 19.7.2017 the parties also proffered a consent dated 19.7.2017 which they asked the court to adopt as its order: The consent is in the following terms.

***“By consent of both parties and their advocates on record, the defendants’ replying affidavit deposed on 18th July, 2017 and the statement of defence filed on 19th July, 2017 be deemed as duly filed and served. The application dated 15th June, 2017 be determined by way of written submissions. The applicant/plaintiff be granted 14 days to file and serve a further affidavit and reply to defence and counterclaim.*”**

5. The consent is adopted as an order of this court.

6. The parties' 2nd consent dated 19/7/2017 is adopted as an order of this court.

7. The application date 15.6.2017 filed by the plaintiff is deemed settled and determined.

8. Parties to fully comply with order 11, Civil Procedure Rules within 60 days of today.

9. Directions on 9.10.2017

10. It is so ordered

Delivered in open court at Chuka this 19th day of July, 2017

in the presence of:

CA: Ndegwa

Rimita h/b Carlpeters Mbaabu for the plaintiff

D.J. Mbaya for the defendant

P. M. NJOROGI

JUDGE