



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT CHUKA

CHUKA ELC CASE NO 260 OF 2017

ELIPHAS MBAE M'RAIJI.....PLAINTIFF

VERSUS

CAROLINE WANJA MBAE.....DEFENDANT

MORIS KIMATHI MBAE.....2ND DEFENDANT

IAN KABURU MBAE.....3RD DEFENDANT

RULING

1. This application is dated 20th July, 2017 and seeks orders:

1. That this application be certified as urgent and be heard on ex parte in the first instance.

2. That the Hon. Court be pleased to vacate the caution placed over parcel No. MWIMBI/MURUGI/5219 on 23.2.2017 and allow the plaintiff/respondent to sell only ½ (half) acre out of the six acres to be able to pay school fee for WINJOY MUKAMI who is out of college for lack of school fees.

3. That cost of this application be in the cause.

2. The application is supported by the affidavit of ELIPHAS MBAE M'RAIJI, the applicant and has the following grounds:

1. That he is the registered owner of the suit land.

2. That the 1st defendant is the wife while the 2nd and 3rd defendants are his sons.

3. That on the 23.2.2017 the defendants cautioned the parcel herein with no apparent reasons only insisting that the 2nd and 3rd defendant should go to school and not the daughter who qualified for university by name WINJOY MUKAMI.

4. The daughter herein is currently out of school for lack of fees.

5. That this application will not prejudice the defendants because it is the said WINJOY'S SHARE which will be sold and the rest of the family parcel remain intact.

3. The application was slated to be heard interpartes on 25th September, 2017. There is evidence that the defendants were properly served with the application and with the apposite hearing date. They did not come to court.
4. Miss Ondari for the applicant asked the court to allow the application because it was not opposed.
5. The application, which is not opposed, is allowed in terms of prayer 2.
6. I note that the plaintiff is the husband of the 1st defendant and the father of the 2nd and 3rd defendants. The parties being relatives, I exercise my discretion and decline to award costs.
7. Consequently, no costs are awarded.
8. It is so ordered.

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

CA: Ndegwa

Miss Ondari for the Applicant

P.M. NJOROGE

JUDGE