



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT CHUKA

CHUKA ELC CASE NO 99 OF 2017

FORMERLY MERU HCC NO. 73 OF 2006

EMILIO MARANGU M'NDIIRI.....PLAINTIFF

VERSUS

ANJERO MUNENE MARINDI.....1ST DEFENDANT

LAWRENCE ANTONY KINYUA.....2ND DEFENDANT

FAITH N KINGA KABUCHA.....3RD DEFENDANT

RULING

1. This application is dated 22nd August, 2017 and came to court under a certificate of urgency. It seeks orders:

1. The orders of this Honourable court dated 11.7.2017 be reviewed.
2. The applicant be granted leave to further amend his originating summons herein to quote the suit parcels of land by their current numbers and include the current owners; to pave way for main hearing.
3. Cost be provided for.

2. The application is buttressed by the affidavit of EMILIO MARANGU M'NDIIRI and has the following grounds.

- a) The suit parcel of land as quoted in the amended originating summons have changed through sub-division and transfer as was evidenced by the affidavit sworn on 14.10.2016 and the annexures thereto.
- b) Two new proprietors have had two of resultant parcels transferred to them.
- c) No orders can legally be made against the two new proprietors unless they are joined herein.
- d) There may even be more parties hereto in future since the court refused to inhibit the suit parcels of land to preserve the same and the defendants are so mischievous as to be sub-dividing and transferring the same to 3rd parties.

e) The subject matter has changed in both numbering and additional owners and unless amendment is allowed the real issues in dispute will never come to therefore (sic).

f) There is an error apparent on the face of the record as hearing would be in vain as the pleaded parcel of land no longer exist (sic).

3. When the application came up for ex parte hearing on 20th September, 2017 the applicant was not in court. His advocate was also not in court. Whereas I am inclined to dismiss the application for non prosecution, having carefully considered the application, I find it necessary to allow prayer 2 in the application.

4. I do note that this matter has been in court for the last 11 years. It ought to have been heard and determined a long time ago. I note that this application is dated 22nd August, 2017. The certificate of urgency was only filed on 19th September, only 10 days before the main suit was to be heard. I am not sure that the late filing of the certificate of urgency was not meant to further delay the hearing of the suit. Further delay should be avoided.

5. It is ordered as follows:

a) The applicant is allowed to amend and exchange his originating summons within 7 days of today so that the suit can be heard on 28th September, as originally intended.

b) As ordered by this court on 11th July, 2017 the plaintiff is to appropriately serve the defendants with the orders issued on 11.7.2017 and the orders issued today.

c) HEARING as fixed on 11.7.2017 to take place on 28.9.2017.

d) Costs shall be in the course.

Delivered in open court at Chuka this **20th day of September, 2017** in the presence of :

CA: Ndegwa

Parties absent

P. M. NJOROGE

JUDGE