



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT CHUKA

CHUKA ELC CASE NO 264 OF 2017

CHARLES MURITHI NJOKA.....PLAINTIFF

VERSUS

MORRIS MUTHOMI EUSTACE.....1ST DEFENDANT

PETER NYAMU MURATHI.....2ND DEFENDANT

RULING

1. This application is dated 21st June, 2017 and seeks orders:

1. That this application be certified as extremely urgent and service of the same be dispensed with at the first instance.
2. That the honourable court be pleased to issue an order of inhibition on Plot No. C17 "A" CHUKA/JOMBAS until further orders of the court.
3. That the honourable court be pleased to issue an order of temporary injunction against the defendants/respondents restraining them by themselves, their servants, agents, employees or anyone acting on their behest from selling/trespassing/interfering with Plot No. C17 'A' CHUKA/JOMBAS pending the hearing and determination of this application.
4. That the honourable court be pleased to issue an order of temporary injunction against the defendants/respondents restraining them by themselves, their servants, agents, employees or anyone acting on their behest from selling/trespassing/interfering with Plot No. C17 'A' CHUKA/JOMBAS pending the hearing and determination of this suit.
5. The honourable court be pleased to make such further or other orders as it may deem just and expedient in the circumstances of this case.

2. The application has the following grounds:

1. That the plaintiff/applicant is the bonafide owner of the said parcel known as Plot NO. C17 'A' CHUKA/JOMBAS
2. That the respondent has interfered with the plaintiff's said property by trespassing thereupon and now wants to sell the same
3. That unless restrained, the respondents/agents will continue to interfere and carry out the planned

sale on the plaintiff's aforesaid property thereby causing the plaintiff/applicant irreparable damage with the likelihood of a breach of the peace.

3. The application is supported by an affidavit sworn by the applicant on 21st June, 2016. It states as follows:

"I, CHARLES MURITHI NJOKA OF ID NO.22389261 make oath and states as follows:

1. That I am an adult of sound mind and the plaintiff herein, thus well versed with the facts and competent to swear this affidavit.

2. That I am the bonafide owner of parcel of land being Plot No. C17 CHUKA/JOMBAS.

3. That an agreement was entered into between the plaintiff and the 1st defendant on the 24th of November, 2010 for the sale of plot No. M66 located within Chuka County.

4. That the 1st defendant/respondent through an unaccountable reason managed to fraudulently enable the transfer of developed Plot No. C17 'A' CHUKA/JOMBAS belonging to me notwithstanding the fact that it was not part of their sale agreement.

5. That another agreement dated 7th December, 2017 was reached between us for a refund of the consideration amount and retransfer of Plot No. C17 'A' CHUKA/JOMBAS back to me. See annexed herewith agreement marked 'CMN-1'

6. That in the spirit of the later agreement I remitted sums monthly with an aim of offsetting the consideration amount of the botched sale agreement but was astounded to realize that the 1st defendant had clandestinely hatched up a plot to sell/has sold Plot No. C17 'A' to the 2nd defendant. See annexed herewith statements marked "CMN-2"

7. That the 2nd respondent's/agents invaded my parcel without my permission and authority and purported to assume ownership, have interfered with the suit plot and are planning to make some construction thereon.

8. That the 1st respondent has ignored all my protestations to retransfer back my parcel of land in spite of a host of letters sent to him. See annexed letters marked "CMN-3".

9. That I have been advised by my advocates which advise I believe to be true that the 2nd respondent has no locus standi and his purported usurpation of the suit land amounts to trespass.

10. That I am certain that unless the court intervenes, there is likely to be a breach of peace as the respondents have shown an intention not to vacate my property peacefully.

11. That if the respondents are not restrained by this honourable court, I am bound to suffer irreparable damage.

12. That what is deponed herein above is true to the best of my knowledge and understanding.

4. The 1st defendant/respondent has opposed the application through a replying affidavit sworn on 12th July, 2017. It states

"I, MORRIS MUTHOMI EUSTACE an adult male person of sound mind and of P. O. Box 7, Chuka do hereby make oath and state as follows:

1. That I am the 1st defendant herein properly versed with all the issues stated herein.

2. That I have read and understood the content of the plaintiff's application dated 21.06.2017 and it is in opposition thereto that I swear this affidavit.
3. That contrary to the assertions by the plaintiff, I am the registered owner of PLOT NO.C 17 'A' CHUKA/JOMBAS.
4. That I purchased the said plot from the plaintiff vide a sale agreement executed on 24.11.2010. (Attached is a copy of the agreement marked 'MME 1').
5. That I paid the agreed consideration at the time of executing the agreement and the plaintiff made an application for the transfer of the plot to the relevant local authority.
6. That the said application was considered and approved in a meeting of the Town Planning Works, Markets and Housing Committee of the defunct Municipal Council of Chuka held on 17.5.2011. (Attached hereto and marked 'MME II' is a copy of minutes extract).
7. That as per the terms and conditions of the agreement of 24.11.2011 I took possession of the entire plot and the developments standing thereon.
8. That I have faithfully paid to the local authority all the rates as they arise in respect of the subject property.
9. That I have had occasion to carefully study the plaintiff's papers filed in court and I must say that I am utterly shocked by the audacity displayed by the plaintiff in an effort to mislead this honourable court into granting undeserved orders.
10. That to begin with, the agreement of 24.11.2010 was in relation to plot No. C 17 'A' and not M66 as alleged and that is probably why the plaintiff has not attached the same.
11. That further, the agreement alleged to have been executed between the plaintiff and me on 07.12.2017 and attached to the plaintiff's supporting affidavit as 'C M N 1') is the product of a reckless forger.
12. That the purported agreement bears the following deficiencies.
 - a) The signature alleged to belong to me is not mine.
 - b) The number 23401612 indicated to be that of my National Identity card is not mine and I have reliably established that it belongs to one KANINI MUNYAO of Machakos County.
 - c) The agreement though written in the first person is not drawn by my hand and I am sufficiently literate.
13. That personally I would not enter into such an agreement without engaging the services of a lawyer.
14. That to compound the issue of forgery perpetrated by the plaintiff, I have reliably established that there is no lawyer based in Kerugoya Town practicing in the name and style of LEE MAINA & ASSOCIATES ADVOCATES who are purported to have issued the demand letter dated 25.4.2017 and attached to the plaintiff's application as annexure 'CMN 3'.
15. That in any case Maru Building where the said law firm is alleged to be situated is in Nyeri Town and not Kerugoya Town.
16. That the payments made by the plaintiff to me through mobile money transfer were for purposes of offsetting a friendly loan I had advanced to him to settle the hospital bill of a sick

relative.

17. That the said attempts to turn the said amount to a refund for the consideration paid towards the purchase of the suit property is highly dishonest and an act of treachery.

18. That the plaintiff has not disclosed why he has not sought to reclaim the property for the last seven (7) years since I obtained ownership if at all he felt I had gotten the same fraudulently.

19. That I am the owner of plot NO. C 17 'A' CHUKA/JOMBAS with absolute and indefeasible proprietary rights and I am hence completely entitled to transfer the same to whoever I desire, including the 2nd defendant.

20. That it would hence be legally improper for the plaintiff who relinquished ownership of the property seven (7) years ago to try and interfere with the manner in which I desire to deal with my asset.

21. That I have lately learnt that the plaintiff has perfected the art of conmanship and as a reflection of his dubious character, the plaintiff has the following fraud related cases at Chuka Law Courts either pending or concluded.

(a) CR. CASE NO. 643 OF 2013

(b) CR. CASE NO. 642 OF 2013

(c) CR. CASE NO. 869 OF 2012

(d) CR. CASE NO. 968 OF 2012

(e) CR. CASE NO. 1254 OF 2012

(f) CR. CASE NO. 419 OF 2014

(g) CR. CASE NO. 723 OF 2014

(h) CR. CASE NO. 945 OF 2014

(i) CR. CASE NO. 360 OF 2012

22. That I am advised by my advocate on record that the plaintiff's application does not meet the threshold for granting orders of injunction and inhibition and I thus pray that the application dated 21.06.2017 be dismissed.

23. That I depose to the foregoing believing the same to be true and accurate to the best of my knowledge, belief and understanding.

5. During interpartes hearing, the plaintiff/applicant told the court that he is the owner of plot NO. C 17 "A" Chuka/Jombas. He said that the owner of plot No. M66 had trespassed upon his plot. He said that he had bought plot No's C 17 "A" and Plot No. M66 which were adjoining plots. He said that he had sold plot No. M66 to the 1st defendant which was undeveloped and was 50 feet by 100 feet in size. He went on to say that he was paid Kshs.200,000/= and had an agreement prepared by an advocate. The said plot was transferred to the 1st respondent.

6. The applicant told the court that about two months after the plot was transferred to the 1st respondent, he was informed by a council officer called Aquinas Gitonga that instead of transferring Plot No. M66 to the 1st respondent, the council had erroneously transferred Plot NO. C 17 "A" on which he had

constructed 11 rooms. Upon realizing that the 1st respondent wanted to sell the plot, he filed this suit.

7. Mr. Mark Muriithi, counsel for the 1st and 2nd respondents, told the court that the respondents opposed the application and relied on the replying affidavit sworn by the 1st respondent on 12th July, 2017.

8. Mr. Muriithi told the court that the application did not meet the threshold required for a temporary injunction to be granted. He opined that assertions contained in the application were not supported by any evidence. He also said that whatever evidence was allegedly relied upon by the applicant amounted to a serious work of forgery. He said that Annexure 1 to the application contained an ID number which did not belong to the 1st respondent. He proffered that upon checking with the Independent Elections and Boundaries Commission, it was found out that the ID belonged to one KANINI MUNYAO of Machakos County.

9. Mr. Muriithi told the court that the demand letter dated 25.4.2017 allegedly addressed to the 1st respondent and allegedly written by an advocate's firm called LEE MAINA & ASSOCIATES was a forgery. He told the court that he had contacted Lee Maina, advocate, who had disowned the letter. He also told Mr. Muriithi that his firm did not have an office at Kerugoya. He submitted that the assertions made in the 1st respondents replying affidavit had not been controverted. He laconically asserted that the suit plot belonged to the 1st respondent as evidenced by an agreement drawn by the firm of P.M. Mutani & Co. Advocates executed on 24.11.2010. He further submitted that the transaction was ratified by the Municipal Council of Chuka through the Minutes of its Town Planning, Works, Markets and Housing Committee held on 17th May, 2011. Mr. Muriithi urged the court to dismiss the application.

10. Called upon by the court to reply to the respondents' submissions, the applicant told the court that the alleged forgeries alluded to by the respondents belong to the realm of police work and that the court should not involve itself in those allegations.

11. I have carefully considered the pleadings and the submissions made by the parties to buttress their assertions.

12. I find that the applicant has not proved to the satisfaction of this court that he deserves the grant of injunctive orders. He has not controverted the claim that he had forged 2 documents. Indeed, he made no attempt to deny those claims.

13. Paragraph 21 of the 1st respondent's replying affidavit sworn on 12th July, 2017 states as follows:

21. THAT I have lately learnt that the plaintiff has perfected the art of conmanship and as a reflection of his dubious character, the plaintiff has the following fraud related cases at Chuka Law Courts either pending or concluded:

(a) CR. CASE NO. 643 OF 2013

(b) CR. CASE NO. 642 OF 2013

(c) CR. CASE NO. 869 OF 2012

(d) CR. CASE NO. 968 OF 2012

(e) CR. CASE NO. 1254 OF 2012

(f) CR. CASE NO. 419 OF 2014

(g) CR. CASE NO. 723 OF 2014

(h) CR. CASE NO. 945 OF 2014

(i) CR. CASE NO. 360 OF 2012

14. The contents of paragraph 21 of the 1st respondent's affidavit sworn on 12th July, 2017, just like the other assertions made by the respondents, though they make serious claims meant to veritably traduce the character of the applicant were not controverted or even challenged to any degree.

15. In the circumstances, I find that this application is without merit.

16. The application is dismissed.

17. The order of inhibition against plot No. C17 'A' CHUKA/JOMBAS granted at the ex parte stage on 27.6.2017 is hereby set aside and vacated.

18. Costs shall be in the cause.

19. The plaintiff is ordered to fully comply with order 11, CPR, within 14 days of today (30.10.2017) and the defendants are ordered to also fully comply with order 11, CPR, within 14 days of receipt of the plaintiff's compliance documents and should the plaintiff NOT comply within the stipulated time, the defendants should nevertheless comply with Orders 7 and 11, CPR, immediately after the lapse of the period granted to the plaintiff.

20. Parties are directed to come to court for directions on 5th December, 2017.

21. It is so ordered.

Delivered in open court at Chuka this **30th day of October, 2017** in the presence of:

CA: Ndegwa

Muriithi for the defendants

Plaintiffs not in court

P.M. NJOROGE

JUDGE