



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT CHUKA

CHUKA ELC CASE NO 217 OF 2017

FORMERLY MERU ELC CASE NO.11 OF 2015

CHARLES KINYUA BERNARD.....PLAINTIFF

VERSUS

RUTH KAARI NTWIGA.....DEFENDANT

RULING

1. There are 2 applications apposite to this ruling. The first one is dated 21st February, 2017. It seeks the following orders:

1. That on the first instance this honourable court be pleased to certify this application as urgent and the same be heard exparte.
2. That this honourable court be pleased to issue orders for the removal and lifting of orders of restriction which are registered against the applicant's parcel L.R. NO.MWIMBI/CHOGORIA/376.
3. That the costs be provided for.

2. The application has the following grounds:

- a) That there is no pending case over the applicant's land herein.
- b) The applicant's said parcel of land ought not have been restricted under the circumstances of this case.
- c) It is only fair and just that the orders sought herein be granted to prevent the interference with the applicant's land.

3. This application is supported by the affidavit of the appellant which states:

"I, CHARLES KINYUA BENARD OF P. O. BOX 564, CHOGORIA in the Republic of Kenya do make Oath and states as follows:

1. That I am the applicant herein hence I am competent to make and swear this affidavit.
2. That this appeal was dismissed by the court on 3.10.2016. Annexed hereto is the court order marked "CKB1".

3. That I am the registered proprietor of the parcel of land L.R. NO. MWIMBI/CHOGORIA/376. Annexed hereto is a copy of official search marked "CKB2".

4. That in the month of December, 2016, I went to the lands office at Chuka Town to check the status of my said parcel of land when the land registrar informed me that an order of restriction was registered against my said parcel of land on 3.10.2011. Copy of the search is marked "CKB2" above.

5. That Chuka Law Courts Criminal Case O. 1357 of 2009 was finalized by the court on 7.10.2011 as shown by ruling marked "CKB 3".

6. That I verily believe that the orders of restriction have been spent.

7. That in view of the foregoing, I believe that there is no basis for the continuation of the said orders of restriction on my land.

8. That it is necessary for the orders of restriction to be removed as prayed.

9. That I make this affidavit in support of my application annexed hereto.

10. That what I have deponed to herein above is true to the best of my knowledge, information and belief.

4. The 2nd application filed by the firm of I.C.Mugo is dated 10.7.2017. It seeks the following orders:

1. That the court be pleased to grant leave to the firm of M/S I.C.MUGO & CO. ADVOCATES to cease acting for the respondent herein.

2. Costs of this application be provided for.

5. The application has the following grounds:

a) That the respondent has shown openly that she does not require the services of M/S MUGO & CO. ADVOCATES granted that she has never appeared in her counsel's office for more than a year now.

b) That the firm of M/S IC MUGO & CO. ADVOCATES has lost contact with the respondent

c) That the respondent has never appeared in the office of M/S I.C. MUGO & CO. ADVOCATES to give instructions on how to proceed with this matter for a period in excess of one year now despite persistent calls by the firm to the respondent.

d) That the respondent should not be forced to retain the firm of M/S I.C. MUGO & CO. ADVOCATES as her counsel if she is no longer interested with their services.

e) That substantive justice of this application demand that the orders sought be granted so that the respondent can either appoint another counsel or appear in person.

6. The Civil Appeal in this suit having been dismissed, I find that the applicant's application dated 21st February, 2017 has merit.

7. Order 2 in the application is granted and costs are awarded to the applicant. Therefore, it is ordered that any orders of restriction and nay other orders whether of inhibition or whatsoever registered against land parcel L.R. NO.MWIMBI/CHOGORIA/376 be lifted and be removed forthwith.

8. The application by the firm of M/S I. C. Mugo & Co, Advocates dated 10.7.2017 is rendered

superfluous after the court has allowed the applicant's application dated 21st February, 2017.

9. It is ordered that this matter be marked as heard and determined and the file be closed.

Delivered in open court at Chuka this **16th day of October, 2017** in the presence of:

CA: Ndegwa

I.C. Mugo - applicant and for the respondent

P.M. NJOROGI

JUDGE