



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT**  
**AT CHUKA**  
**CHUKA ELC CASE NO. 221 OF 2017**  
**FORMERLY MERU ELC. 80 OF 2004**

**M'NYERI M'RIMUNYA.....PLAINTIFF**

**VERSUS**

**BETH KAARI.....1<sup>ST</sup> DEFENDANT**

**PRUDENCE MUKIRI NKOROI.....2<sup>ND</sup> DEFENDANT**

**PHARES GITARI NKOROI.....INTERESTED 3<sup>RD</sup> DEFENDANT**

**RULING**

1. This application states that it is brought to court by virtue of Article 48 of the Constitution of Kenya, 2010, Section 1A, 1B and 3A of the Civil Procedure Act, Order 1 Rule 10, Order 8 Rule 5 and Order 51 Rule 1 of the Civil Procedure Rules, Section 3 and 13 of the Environment and Land Court Act, No. 19 of 2011, and Rule 1 of the Practice Directions of the Environment & Land Court.

2. The application is dated 9<sup>th</sup> October, 2017 and seeks the following orders:

1. That PHARES GITARI NKOROI be enjoined herein as the 3<sup>rd</sup> defendant.

2. That the defendant's do have leave to amend their defence and counter claim herein.

3. That if prayer (2) is granted, the applicants' intended defence and counter claim herein be deemed to have been filed and served on time.

4. That costs of this application be provided for.

3. The application is supported by the affidavit of Phares Gitari Nkoroi, the intended 3<sup>rd</sup> defendant and the applicant herein AND has the following grounds:

a) The intended 3<sup>rd</sup> defendant and the 1<sup>st</sup> and 2<sup>nd</sup> defendants are the true, genuine and lawful owners of LR. No. Karingani/Muiru/1749 and the plaintiff knows it; the intended 3<sup>rd</sup> defendant is the legal representative of the registered owner, the late Mr. M'Ingentu M'Mwereria, who died intestate on 3<sup>rd</sup> October, 1998;

- b) After the applicant's father passed on, the plaintiff sought to steal a march on the estate of the applicant's father and set out to get his land through purported execution for purported costs;
- c) The intended 3<sup>rd</sup> defendant was appointed a legal representative of the late Mr.M'Ingentu M'Mwereria on 18<sup>th</sup> September, 2017, in Chuka High Court Misc. Succ. Cause No. 22 of 2017: In the matter of the Estate of M'Ingentu M'Mwereria (deceased); under section 79 of the Law of Succession Act, the property of a deceased's person vests in his/her legal representative; the applicant, therefore, is the legal owner of the suit property;
- d) Under section 3 of the Environment & Land Court Act, No. 19 of 2011, this Honourable Court has power to make orders to facilitate the just, expeditious, proportionate and accessible resolution of disputes before it;
- e) Under Order 1 Rule 10 of the Civil Procedure Rules, this Honourable Court has jurisdiction of its own motion or application of any person who is likely to be affected by its orders or on his application to enjoin him as a plaintiff or defendant.
- f) The intended 3<sup>rd</sup> defendant is a necessary party in these proceedings in that he has an identifiable stake/ a legal interest in the proceedings before this Honourable Court; the intended 3<sup>rd</sup> defendant will be adversely affected by any orders / judgment given herein against the estate of the deceased.
- g) As stated above, the intended 3<sup>rd</sup> defendant's late father, Mr. M'Ingentu M'Mwereria, was the lawful owner of the suit parcel of land known as LR. N. Karingani/Muiru/1749 which is the subject matter of this suit in which the plaintiff claims to be the purported lawfully registered owner;
- h) As has been held by the Court of Appeal at Nairobi in Civil Appeal No. 85 of 1992: James Ndungu Wambu –v- Republic, no judgment can be enforced against a person who is not a party to a suit and the said Phares Gitari Nkoroi is a person directly affected by this Honourable Court's orders and hence the need to be enjoined in these proceedings; there is a danger that orders could be made against the estate of the deceased without its being heard;
- i) As held by the Court of Appeal in J. C. Patel v B. D. Joshi (1952) 19 EACA 42, it is the practice of this Honourable Court to freely allow amendments; at page 48, the law was stated as follows,
- The rule of conduct of the court in such a case as this is that, however negligent or careless may have been the first omission, and however late the proposed amendment, the amendment should be allowed if it can be made without injustice to the other side. There is no injustice if the other side can be compensated by costs; but if the amendment will put them into such a position that they must be injured, it ought not to be made.***
- j) The plaintiff will not suffer any prejudice if the court grants the orders sought herein.
- k) It is the interest of justice that the prayers sought be granted.

4. The application was heard orally on 23.10.2017. Mr. Karanja, for the applicant, by and large restated the grounds on the face of the application. He told the court that the intended 3<sup>rd</sup> defendant, Phares Gitari Nkori, was the legal representative of M'Ingente M'Mwireria, the original owner of the suit land. He told the court that the applicant had annexed the apposite grant and a death certificate among other documents.

5. Mr. Karanja's proposition was that it was in the interest of justice that all evidence be heard to enable the court make a decision based on all available evidence.

6. Mr Gichuki, for the plaintiff opposed the application. A conspectus of his proposition was that allowing another defendant in the suit would cause it to be delayed further and would precipitate many changes in the pleadings and in the court process, including compliance issues.

7. I opine that both sides have valid arguments. However, although justice delayed is justice denied, justice demands that concerned parties be heard to the fullest possible extent. Justice served without parties being given a chance to proffer all available evidence will amount to half-baked justice. Half baked justice is not countenanced by our constitution. Substantial justice cannot embrace half-baked justice.

8. As amendments can be allowed at any time before judgment, in the interest of justice, I am inclined to allow this application.

9. In the circumstances, this application is allowed.

10. Costs shall be in the cause.

11. It is so ordered.

Delivered in open court at Chuka this **27<sup>th</sup> day of November, 2017** in the presence of:

CA: Ndegwa

Gichuki for the Plaintiff

Karanja for the Defendant

**P. M. NJOROGÉ**

**JUDGE**