



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT CHUKA

CHUKA ELC PETITION CASE NO 02 OF 2017

IN THE MATTER OF CONSTITUTION OF KENYA

AND

IN THE MATTER OF VIOLATION OF PROVISIONS OF THE BILL OF RIGHTS

AND

ENFORCEMENT OF THE SAME

UNDER ARTICLE 23 (1) & (3), 258 (1) CONSTITUTION OF KENYA

AND

RULE 19 OF SIXTH SCHEDULE OF THE TRANSITIONAL AND CONSEQUENTIAL PROVISIONS

BETWEEN

KINYUA M’IBUA M’MURAKU.....PETITIONER

AND

THARAKA NITHI COUNTY GOVERNMENT.....1ST RESPONDENT

DEPUTY COMMISSIONER, THARAKA NITHI.....2ND RESPONDENT

**DISTRICT LAND ADJUDICATION & SETTLEMENT OFFICER,
THARAKA**

SOUTH/NORTH DISTRICTS.....3RD RESPONDENT

THE HON. ATTORNEY GENERAL.....4TH RESPONDENT

THE MINISTER FOR LAND, HOUSING & URBAN DEVELOPMENT.....5TH RESPONDENT

RULING

1. This petition states as follows:

PETITION

To the High Court of Kenya

The Humble Petition of Kinyua M’Ibua M’Muraku of P. O. Box 2387-60200, Meru in the Republic of Kenya who petitions as follows:-

1. The Petitioner is an adult person of sound mind residing and earning living in Tharaka North County. Service for the purpose of this petition is **C/O CHARLES KARIUKI & CO. ADVOCATES**

NJURI NCHEKE STREET,

KCB BUUILDING, 1ST FLOOR,

P. O. BOX 2387-60200,

MERU.

2. The 1st Respondent is a Local Authority under Local Government Act services shall be through the Petitioners Advocate offices.

3. The 2nd and 3rd Respondents are departments of Government. Service is through the offices of the 4th Respondent who is the Government Chief Legal Adviser.

4. The 1st Respondent with the aid of 2nd and 3rd Respondents have taken 2.60 Ha of Petitioner’s parcel of land excised from his South Tharaka/Kamanyaki/”A”/354 and left him with the balance in Nos original No.354 and a new No. 481.

5. The matter went to the 3rd Respondent by way of objection No. 54 and 72 but he affirmed without justification that the 1st Respondent to get from land 1/3 of the petitioner’s whole land.

6. The matter went to the 2nd Respondent representing the Minister on delegated authority who affirmed the above verdict of the 3rd Respondent.

7. The 2 decisions are devoid of merit and unconstitutional as they deprived the Petitioner his 2.60 Ha without following the laid down procedure nor did they compensate him as required by the law.

YOUR PETITIONER, therefore humbly prays that:-

(a) An order of judicial review to quash the decisions of the 2nd and 3rd Respondents and land parcel No. S. THARAKA/KAMANYAKI/272 revert back to Petitioner. Alternatively Petitioner be fully and promptly compensated for the 2.60 Ha acquired by the 1st Respondent.

(b) Costs and interests

DATED AT MERU THIS 20TH DAY OF SEPTEMBER, 2012

FOR:CHARLES KARIUKI & CO.

ADVOCATES FOR THE PETITIONER

2. On 21.11.2017, Mr. Murango Mwenda told the court that the Petitioner had ignored the court’s order to

file his written submissions within 14 days of 2.11.2017 to enable the respondents to respond. As the petitioner had not done so, he asked the court to dismiss the petition for disobedience of court orders and for non prosecution.

3. I agree that the petitioner has disobeyed this court's order and has failed to prosecute his petition.

4. In the circumstances, this petition is dismissed.

5. Costs are awarded to the 1st Respondent.

6. It is so ordered.

Delivered in open court at Chuka this **21st day of November, 2017** in the presence of:

CA: Ndegwa

Murango Mwenda for the 1st Respondent

P.M. NJOROGE,

JUDGE.