



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT OF KENYA AT CHUKA

CHUKA ELC CASE NO 156 OF 2017

FORMERLY MERU ELC CASE NO. 53 OF 2012 (OS)

FORMERLY MERU CIVIL CASE NO.117 OF 2009(OS)

SALESIO MATI MWIRICHIA.....PLAINTIFF

VERSUS

FREDRICK MUGAMBI.....1ST DEFENDANT

GEOFFREY N. THUITAI.....2ND DEFENDANT

RULING

1. This application is dated 16th July, 2013 and seeks orders:

1. The applicant be joined as a party in these proceedings as a claimant entitled to land parcel No. SOUTH THARAKA/TUNYAI/283 by adverse possession.
2. The interlocutory judgement entered in favour of the plaintiff on 30th August, 2010 and the final judgment delivered in these proceedings on 14th June, 2012 and all consequential orders be set aside.
3. The honourable court do direct that either this suit or HCCC No. 53 of 2012 be a test suit on the claims by the applicant and the plaintiff against the defendant.
4. Costs be provided for.

2. The application has the following grounds:

1. The proceedings herein were made secretly notwithstanding the fact that the applicant has been in possession of the land.
2. The applicant stands the risk of being evicted from the land unless the orders sought are granted.
3. The claim by the applicant and the plaintiff is against one defendant.
4. It is only fair and just that the orders sought be granted.

3. The application is supported by the affidavit of the applicant sworn on 16.7.2013 which states

“I, FREDRICK MUGAMBI of P. O. Box 205, Meru hereby make oath and say as follows:

1. That I am the applicant herein.
2. That I came to learn of this suit and the judgment delivered by this court following an application filed in HCCC NO. 53 of 2012 in which I am the plaintiff – annexed and marked “FM1” is a copy of the application.
3. That my claim is for title to the suit land be adverse possession-annexed and marked “FMIII” are copies of the originating summons.
4. That I also obtained orders of inhibition to protect my interest in the land-annexed and marked “FMIII” is a copy of the order.
5. That I and members of my family have always lived on the land which fact is very well within the plaintiff’s knowledge.
6. That I believe that the plaintiff is seeking to evict me from the land.
7. That the plaintiff ought to have notified me of this suit as he knows my residence.
8. That had I been notified of the suit I would have taken appropriate steps to protect my interest in the suit land.
9. That unless the judgment is set aside I will be evicted from the land which I and members of my family have always occupied.
10. That I urge this court to grant the orders sought so that our rival claims to the suit land can be determined.
11. That the contents of this affidavit are true to the best of my knowledge, information and belief.

4. The application was canvassed by way of written submissions. By and large, the applicant relied on the facts stated in his pleadings. He said that as the parties lived on the suit land, pursuing HCCC NO. 53 of 2012 would be an exercise in futility.

5. The interested party’s advocate submits that the plaintiff in Meru ELC 53 of 2013 (OS) filed his suit against one Geoffrey N. Thuita. He, however, says that after filing that suit he had not as on 23rd December, 2014 served the defendant with summons to enter appearance since 2012. He laments that the plaintiff seems to be treating the plaintiff in Meru HCC 117 of 2009 as the defendant in HCCC NO. 53 OF 2012 (Now Chuka ELC 156 of 2017). It is, in conclusion, submitted that the plaintiff in this suit has no business interfering with the plaintiff’s judgment in HCC NO. 117 of 2009.

6. I have considered the pleadings and the submissions proffered by the parties in support of their diametrically opposed assertions.

7. It is good practice and the correct thing for Judges to respect judgments delivered by their brothers and sisters Judges. It is not controverted that a judgment was delivered by the Hon. Justice J. A. Makau, J, on 14th June, 2012, I opine that this matter should have been placed for directions before the Hon. Justice J. A. Makau, as he was then still serving as a Judge in Meru.

8. I find that I have no jurisdiction to set aside the judgment delivered by a judge who, then, had both concurrent and horizontal jurisdiction similar to the jurisdiction, I possess.

9. I dismiss the application.

10. To allow the parties to prosecute Meru HCC No. 53 of 2012, and in view of the claim that the defendant in Meru HCC 117 of 2009 had at one time been willing to give the plaintiff 3 acres of land which the plaintiff claims to be ancestral land on which he has lived for a long time, I order that land parcel No. S. THARAKA/NITHI "A"/283 be inhibited for a period of 6 months only from the date of this ruling.

11. It is ordered that file No. Meru HCC 117 of 2009 be marked as heard and determined. Future dealings between the parties should be handled through Chuka ELC 156 of 2017 (formerly Meru ELC 53 of 2012 (OS)).

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

CA: Ndegwa

Fredrick Mugambi – plaintiff

Salesio Mati Mwirichia – Third party

P. M. NJOROGE

JUDGE