



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT CHUKA**

**CHUKA ELC CASE NO 72 OF 2017**

**FORMERLY MERU ELC CASE NO.7 OF 2013**

**PETER MUGAMBI MUCHEE.....PLAINTIFF**

**VERSUS**

**HARRISON KIRIMI.....DEFENDANT**

**JUDGMENT**

1. The Plaintiff in his plaint dated 11<sup>th</sup> January, 2013 prays for Judgment against the defendant for:
  - (a) A permanent injunction restraining the defendant, his servants, workmen and agents, from entering on and/or from erecting or causing to be erected thereon any structures, or from in any way interfering with the plaintiff's use and enjoyment of the plaintiff's said property.
  - (b) Damages.
  - (c) Interest thereon.
  - (d) Costs of this suit.
  - (e) Any other relief the court deems fit to grant.
2. The court notes that the plaintiff has not given particulars of the suit land. I, however, note that in paragraph 3 of the plaint the plaintiff states that he is the owner and registered proprietor of all that property known as parcel No. 1447, CHIAKARIGA 'A' Adjudication section.
3. PW1, the plaintiff, gave evidence that he is the registered owner of parcel No. 1447, Chiakariga 'A' Adjudication section. He said that the defendant had encroached his land and that he had sought the intervention of the area chief who had, in writing, asked the defendant to cease the impugned encroachment. He produced the chief's letter as an exhibit. He also produced a sketch map showing the location of his land parcel 1447 and the land claimed by the defendant, parcel No. 1459. The sketch map shows that the two parcels of land are separated by an access road. He also testified that parcel No. 1448, which was on the same side as his parcel No. 1447 belonged to a neighbor called Mutiria.
4. PW1's witness statement states that he was allocated the suit land by the Kanjogu Land Committee in 1994. As there was no objection within the time allowed by law, his ownership of the suit land was confirmed on 27<sup>th</sup> February, 1995. He took possession but in the year 2012, the defendant started encroaching on his land. He states that the defendant is the son of his neighbour who owns plot No. 1459,

Chiakariga 'A' Adjudication section. He reported the encroachment to the chief of the area who asked the defendant to cease encroachment on his land. Even after seeking the assistance of the Kianjogu clan elders and the Land Adjudication Officer, the defendant persisted with his encroachment. Hence his filing of this suit.

5. PW2 by and large supported the plaintiff's evidence. He told the court that he knew the plaintiff from his childhood. He also said that he only came to know the defendant recently. He was categorical that the plaintiff was allocated the suit land by the Kanjogu clan around 1994. He said that he knew Chabari Njeru, the father of the defendant who was given parcel No. 1459 by the clan. He said that when parcel No. 1447 was allocated to the plaintiff, it was not inhabited by anyone.

6. In his witness statement, PW2 states that in 1993 and 1994 when the opposite allocations were taking place, he was the chairman of Kanjogu Clan. He states as chairman, together with the committee, they allocated parcel No. 1447 to the plaintiff and No. 1459 to the defendant's father. He was categorical that the land belonged to the plaintiff and asked that the defendant be evicted from the land.

7. PW3, Mugao Njagi, told the court that parcel No. 1447 belonged to the plaintiff. He told the court that the defendant had recently invaded the plaintiff's land. He told the court that the defendant, before he invaded the plaintiff's land lived on parcel No.1459 which belonged to his father.

8. In his witness statement, PW3 told the court that he was secretary of Kanjogu clan and chairman of Karogu sub clan. He said that he was in the committee that allocated parcel No. 1447 to the plaintiff.

9. DW1, the defendant gave evidence that he stays at CHIAKARIGA on his father's land. He told the court that he had lived there since the 1970's.

10. In his statement DW1 states that his father Peter Mugambi Chabari owns parcel No. 1459 which is expansive. He says that he has developed part of the land which is the only place he calls home. He says that one Paul Muchee, who was the Kanjogu Land Committee Chairman illegally and in collusion with a land official hived off parcel No. 1447 from parcel No. 1459. He says that parcel No. 1460 was also hived from parcel No. 1459 and was allocated to a former member of parliament called Francis Kagwima. He told the court that he had in 2005 buried his mother in the portion now occupied by the plaintiff without any protestation by the plaintiff. I note that this allegation has been denied by the plaintiff.

11. DW1 also told the court that the plaintiff and his father lived at Tunyai scheme and said that he could not understand how they came to own part of his ancestral land. He did not, however deny that the plaintiff was a member of the Kanjogu clan whose clan allocated the suit land to him.

12. DW2, Peter Mugambi Nchabari told the court that he is the owner of parcel No. 1459 which is family land that the family had occupied since 1972. In his witness statement he claims that his wife was buried on the suit land, parcel No. 1447, in 2005. He says that the allocation of parcel No. 1447 was an illegal scheme by the plaintiff and land officials to illegally hive off a portion of his land. He wonders how the plaintiff who hails from Tunyai Division could be allocated land at Chiakariga, even when he was not a member of his village or his clan.

13. I do note that in his oral evidence, DW2 told the court that he hails from Tunyai location. This is the same place he says that the plaintiff hails from. This means that he and the plaintiff hail from the same place. It is noted that DW2 did not disclose to court if or if not he belonged to the Kanjogu clan, which allocated the land to both of them.

14. DW3, Francis Mbii Ndetho, told the court that he resides at Chiakariga. He asked the court to adopt his witness statement dated 14<sup>th</sup> March, 2017 as his evidence in this suit.

15. In his witness statement, DW3, claims that he was secretary of the Kanjogu Land Committee from the year 1992 to the year 1995 when the land adjudication process ended. He denies that PW3 was the secretary of the Kanjogu Land Committee. He also states that the committee did not approve allocation of

parcel NO. 1447 to be hived from parcel No. 1459. He states that existence of parcel NO. 1447 is an illegal scheme by a land official to allocate land to the plaintiff.

16. I consider that the question to be determined is if according to the evidence adduced by the plaintiff and opposed by the defendant, the plaintiff is entitled to an order of permanent injunction against the defendant not to, at all, interfere, with his ownership, use and occupation of land parcel No. 1447, CHIAKARIGA 'A' Adjudication section.

17. I have carefully considered the pleadings, the oral evidence given by the parties, the submissions filed by the parties and the authorities they have proffered in support of their diametrically opposed propositions.

18. The determination of the question I have framed, is purely reliant on the evidence the parties have tendered.

19. The evidence of the plaintiff and his witnesses is pellucid that he was allocated the suit land by an allocation committee. His evidence is that the adjudication process was properly followed. He also says that no one objected to the allocation of the land. The plaintiff produced documents to show that he was the registered owner of the suit land. He has also produced evidence that when the defendant invaded his land, he sought the assistance of the area chief and clan elders. He filed this suit when the defendant persisted in encroaching upon this land.

20. The defendant claims that the land is ancestral land and he and his family owned their parcel No. 1459 in addition to the plaintiff's parcel No. 1447. He claims to have buried his mother on parcel No. 1447 in 2005. He offered no evidence to prove this claim.

21. The defendant and his witnesses did not give evidence to prove how they came to own "the expansive parcel No. 1459". The question is: Had an adjudication process taken place? Also: How come parcel No. 1447 precedes parcel No. 1459 in the adjudication register?

22. The defendant questions how the plaintiff came to own land at CHIAKARIGA while he lived at Tunyai. His father in his oral evidence told the court that he lived at Tunyai, the same place the defendant says the plaintiff stays. One can ask: If his father, who is the registered owner of parcel No. 1459 was allocated land at CHIAKARIGA, then why should the plaintiff who also hails from Tunyai, according to the defendant and his father, also not be allocated land at Chiakariga?

23. The defendant has not denied that he has encroached upon the suit land. The sketch map produced as an exhibit by the plaintiff shows that an access road separates parcel No. 1459 from Parcel No. 1447. The sketch map also shows that across the road of access and opposite parcel No. 1459, in addition to parcel No. 1447, there are parcel Nos. 1448 and 2113. I do not understand why the defendant has decided to only encroach upon parcel No. 1447.

24. There are elaborate procedures set out in both the Land Adjudication Act and the Land Consolidation Act which are followed to resolve land disputes in adjudication and consolidation areas. It is pellucid that the defendant did not follow the legally sanctioned procedures. Instead he took the law into his own hands and invaded the plaintiff's land. I deprecate the defendant's conduct.

25. I find that the plaintiff is entitled to the prayers contained in his plaint.

26. Judgment is entered for the plaintiff against the defendant in the following terms:

a) It is declared that Land parcel No. 1447, CHIAKARIGA 'A' Adjudication section belongs to the plaintiff, PETER MUGAMBI MUCHEE.

b) A permanent injunction is hereby issued restraining the defendant, his father, his family, his servants, workmen and agents from entering or erecting or causing to be erected thereon any

structures or from in any way interfering with the plaintiff's use and enjoyment of land Parcel No. 1447 CHIAKARIGA 'A' Adjudication section.

c) Costs are awarded to the plaintiff.

27. It is so ordered.

Delivered in open court at Chuka this **8<sup>th</sup> day of November, 2017** in the presence of:

CA: Ndegwa

Otieno C Present for the plaintiff

Peter Mugambi Muchee – plaintiff

Advocates absent

Defendant absent

**P.M. NJORGE**

**JUDGE**