



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT CHUKA
CHUKA ELC CASE NO 253 OF 2017
FORMERLY MERU ELC CASE NO 65 OF 2008

M'ARICHIA MWITHIGA KIRIGIA.....PLAINTIFF

VERSUS

ROMANO MUTHENGI NDUYO.....1ST DEFENDANT

JAMES MUCHOKI KATHENYA.....2ND DEFENDANT

LANDS ADJUDICATION & SETTLEMENT

OFFICER, THARAKA DISTRICT.....3RD DEFENDANT

ATTORNEY GENERAL.....4TH DEFENDANT

RULING

1. This application which is dated 18.12.2018 says that it is predicated upon sections 1A, B and 63 (e) of the Civil Procedure Act and Order 50 Rule 1 of the Civil Procedure Rules.

2. The application seeks the following orders:

1. That the honourable court be pleased to certify this application of utmost urgency and to hear it ex-parte and on a priority basis in the 1st instance.

2. That the honourable court be pleased to stay further proceedings in this matter and more specifically stay delivery of judgment on 19th December, 2017 or on any other later date pending the interpartes hearing and determination of this application.

3. That the honourable court be pleased to reopen the case and grant the 1st and 2nd defendants leave to cross examine the plaintiff and his witnesses and to adduce their own evidence.

3. The application has the following grounds:

1. That the defendants did not participate in the hearing of this matter. The defendants come from Tharaka and there was a communication breakdown between them and their advocates and therefore during the hearing they were absent in court.

2. That the 1st and 2nd defendants have a very strong defence which raises very weighty triable issues. For instance the consent to file the suit is over land parcel Number 1477 situated in Irunduni Adjudication Section yet the plaintiff in his pleadings has introduced numbers 1322 and 1198.

3. Further land parcel number 1477 situated in Irunduni Adjudication Section was not the subject of litigation in either the committee or arbitration board case and the 1st defendant has never been a party to those proceedings.

4. Lastly land parcel number 1322 situated in Irunduni Adjudication Section belongs to KathenyaKathaka who is deceased. The 2nd defendant is wrongly sued in absence of a grant of letters of administration.

4. At the outset, I wish to point out that Order 50 Rule 1 of the Civil Procedure Rules has no relevance to this application. Rule 1 merely explains what is meant by calendar month.

5. The application was brought by way of a certificate of urgency filed in the afternoon of 18th December, 2017. The judgment for which it is sought a stay of delivery was slated for delivery on 19th December, 2017. I do not understand why the defendants' advocate had to wait until the last minute to file this application. The date for delivery of judgment was fixed on 21st November, 2017, almost one month before this application was filed.

6. The application was called out after I had delivered judgment in this suit. The application is, therefore, overtaken by events. The casual alacrity with which the defendants' advocate took in his prosecution of this case is veritably demonstrated by the fact that although he had brought the application to court by way of a certificate of urgency, he never turned up to prosecute it.

7. The application is dismissed as judgment has already been delivered.

8. I opine that this application is rather sui generis. I have never come upon an application seeking to stop a court of law from delivering its judgment. Nevertheless, I would have still dismissed the application, even if the apposite judgment had not been delivered, because it is speculative and anticipates the direction a court's judgment would take.

9. For avoidance of doubt, this application is dismissed.

10. I issue no order as to costs.

Delivered in open court at Chuka this 19th day of December, 2017

in the presence of:

CA: Ndegwa

Romano Muthengi – 1st defendant

P.M. NJOROGE

JUDGE