



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT CHUKA
CHUKA ELC CASE NO. 238 OF 2017
FORMERLY MERU ELC 60 OF 2014

CHUKA UNIVERSITY.....PLAINTIFF/APPLICANT

VERSUS

LUCIA NDURU.....1ST DEFENDANT

KARIUKI NDURU.....2ND DEFENDANT

MUTEMBEI NDURU.....3RD DEFENDANT

RULING

1. This application is dated **30th November, 2017** and seeks the following orders:

That this application be certified urgent and be heard ex-parte.

That this honourable court be pleased to issue a conservatory order maintaining status quo to the effect that, there shall be no further digging, excavating, dumping building materials, wasting, felling of trees, constructing thereon or in any other way dealing with or interfering with the property known as Land Reference No. Marembo/Rianthiga/293 by the defendants, their servants and/or agents pending the inter-partes hearing of this application.

That this honourable court be pleased to issue a conservatory order maintaining status quo to the effect that, there shall be no further digging, excavating, dumping building materials, wasting, felling of trees, constructing thereon or in any other way dealing with or interfering with the property known as Land Reference No. Marembo/Rianthiga/293 by the defendants, their servants and/or agents pending the hearing and determination of this suit.

That an order of injunction do issue to restrain the defendants, their agents and/or servants from being or remaining or entering upon the suit property known as Land Reference No. Marembo/Rianthiga/293.

That costs of this application be provided for.

2. The application is supported by the affidavit of professor Stanley M. Kagwanja and has the following grounds:

1. That the applicant is the registered owner/proprietor of Marembo/Ranthiga/293 the suit property

measuring 500 acres having obtained the same through donations from the residents of Marembo and Rianthiga sub location.

2. That the residents of Marembo and Ranthiga sub location donated 15% to become public land where schools, university, hospitals and an airstrip could be built, the applicant through the District Land Adjudication and settlement Department of the Ministry of Lands facilitated the process and obtained a title number Marembo/Rianthiga/293 for the donated land.

3. That the residents who were living in the suit property were compensated by being given adjacent parcels of land bordering the University land through the District Land and Settlement Department of the Ministry of Lands including the Defendants herein.

4. That from the foregoing, the applicant is the registered owner and has absolute rights of ownership and their rights and interest are in terms of section 25(1) of the Land Registration Act No. 3 of 2012 are indefeasible.

5. That the applicant further asserts that being the legally registered owner, it has been in continuous possession of the same since the year 2011, when it was issued with a title deed in respect to the suit property.

6. That the parcels of land forming the suit property were not developed and not adjudicated, therefore had no land reference numbers prior to the acquisition by the applicant and that the applicant's title is the first to be registered in Marembo and Rianthiga location.

7. That the defendants herein have illegally settled on a portion of the suit property approximately one (1) (sic), continue to further trespass on the suit property and degrade the suit property by cutting down of trees and illegally burning the same for production of charcoal.

8. That the defendants activities have a ripple effect on the adjacent land which includes a river that is facing an imminent dry up and not unless their activities are stopped in time, the suit property will be depleted hence rendering it useless for the beneficiary who is the applicant herein.

9. That the applicant is apprehensive that the defendants have no intention of taking care of the land because they possess no legal right over it and are merely taking advantage by wastefully using the suit property.

10. That the plaintiff/applicant is desirous of developing the suit property it has obtained the requisite blue prints for construction of the university but the same cannot be implemented due to the illegal encroachment by the defendants.

11. That the defendants were allocated parcel Nos. 88, 181, 242, 272, 286 and 316 as compensation for the 15% of land donated by their deceased father which they still occupy and at the same time encroach on the plaintiff's suit property.

12. That at the time of filing this suit there were no permanent structures on the suit property but the defendants without any colour of right have proceeded to construct semi-permanent structures on the said property.

13. That the defendants are benefitting out of the applicant's property against the equitable principle that "Nemo Debet Locupletari ex aliena jactura" (No. one should be enriched by another's loss).

14. The applicant states that they engaged the services of surveyors to establish the beacons and boundaries of the parcels of land and after the surveyors confirmed the beacons for land reference No. Marembo/Rianthiga/293, the applicant fenced the same but the defendants interfered with the beacons and encroached into the suit land herein.

15. That the defendants never recorded any objection before the land adjudication committee in respect of the adjudication register and therefore they cannot be heard to raise any complaint after the adjudication and the settlement was done procedurally. Equity aids the vigilant and the indolent.

16. That the parcel in dispute which the defendants adamantly claim to be theirs was part of the 15% which their deceased father gave up to form the suit property known as land reference Marembo/Rianthiga/293 for the purpose of construction of Chuka University.

17. That the defendants insist that they are the rightful owners to the disputed parcel of land and have continued to further trespass and encroach on the applicant's land reference No. Marembo/Rianthiga/293 thereby erecting both permanent and semi-permanent structures.

18. That the defendants have denied the plaintiff/applicant access to the disputed parcel of land which is within the suit property thus the defendants unlawful action have deprived the plaintiff/applicant of this constitutional right to property.

19. That the plaintiff/applicant has been deprived of the use and enjoyment of the suit property as a result of the said trespass by the defendants.

20. That the defendants have trespassed on the suit property by erecting structures thereon and that, notwithstanding the plaintiff/applicant's repeated demands, have refused to vacate or deliver possession of the suit property to the plaintiff/applicant.

21. That the applicant deserves to take over management and occupation of their property and develop the same and the failure by the defendants to give vacant possession of the said property is causing untold misery to the applicant as their projects are stalled and they cannot develop the disputed parcel of land within the suit property.

22. That it is in the public domain that illegal encroachment/land grabbing of school property has gained notoriety and/or is rampant and not unless the court moves in to arrest the situation the plaintiff/applicant will be illegally deprived of the use of the suit property.

23. That the plaintiff/applicant has come to this court to protect its constitutional right to protection of property and it is therefore in the interest of justice that the orders sought in the application herein be granted.

Dated at Nairobi this 30th day of November, 2017

3. After hearing the application *ex parte*, the court is of the view that a conservatory order is merited in order to conserve the suit land.

4. In the circumstances, prayer b in the application is granted in terms of section 63 of the Civil Procedure Act.

5. The application should be properly served upon the defendants and the parties will be heard *inter partes* on **23rd January, 2018**.

6. Costs shall be in the cause.

7. It is so ordered.

Delivered in open court at Chuka this **18th day of December, 2017** in the presence of:

CA: Ndegwa

Parties not in court

P.M. NJORGE

JUDGE