



Case Number:	Environment and Land Case 253 of 2017
Date Delivered:	24 Jan 2018
Case Class:	Civil
Court:	Environment and Land Court at Chuka
Case Action:	Judgment
Judge:	Peter Muchoki Njoroge
Citation:	M'arichia Mwithiga Kirigia v Romano Muthengi Nduyo & 3 others [2017] eKLR
Advocates:	-
Case Summary:	-
Court Division:	Land and Environment
History Magistrates:	-
County:	Tharaka Nithi
Docket Number:	-
History Docket Number:	-
Case Outcome:	Judgment entered for the plaintiff
History County:	-
Representation By Advocates:	-
Advocates For:	-
Advocates Against:	-
Sum Awarded:	-
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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

JUDGMENT

1. The plaintiff in his amended plaint dated 18th February, 2016 prays for judgment against the defendants jointly and severally in the following terms:

a) An order for cancellation of the sub-division of plaintiff's P/No.1198, Irunduni Adjudication Section into L.R. Land P/NO. 1477 and Land P/No. 1322, Irunduri Adjudication Section recorded to the 1st and 2nd defendants respectively, and reinstatement of the same to its original No. 1198, Irunduni Adjudication Section.

b) Costs of the suit, plus interest thereon at court's rates.

2. Hearing of this suit was fixed to take place on 21st November, 2017.

3. The plaintiff and his witnesses were in court. The defendants were not in court. In terms of Order 12 Rule 2 of the Civil Procedure Rules, the court satisfied itself that the notice of hearing had been duly served. The names of the defendants were called on for hearing outside court. As only the plaintiff was in court, the court decided to have the hearing proceed ex-parte.

4. PW1, the plaintiff, told the court that he was the plaintiff and a peasant farmer. He asked the court to adopt his witness statement dated 28.4.2016 as his evidence in this suit.

5. In his witness statement, the plaintiff avers that at all material times, he was the registered proprietor of all that expansive piece of land known as IRUNDUNI LAND ADJUDICATION SECTION NO. 1198, measuring about 25 acres, which he had inherited from his father, M'MWITHIGA (now deceased) who had gathered the land long before 1960s.

6. PW1 says that some time ago, the 1st and 2nd defendants, illegally trespassed onto a portion of his land P/No. 1198, Irunduni Adjudication Section. He reported the matter to the area provincial administration and upon the matter being heard by the area chief, it was found that the 1st and 2nd respondents had illegally trespassed onto the suit land and they were ordered to vacate it. They complied.

7. Later on, PW1, avers the 1st and 2nd defendants sued him vide land committee case no. 27 in Tharaka in which the committee ordered the sub division of the suit land. He appealed the decision of the committee to the Arbitration Board vide Case NO. 14 and won. The board ordered cancellation of the sub-division and it held that the resultant subdivided parcel Nos. 1322 and 1477 were the plaintiff's property.

8. PW1, avers that the 1st and 2nd defendants, being dissatisfied with the Arbitration Board's decision filed A/R objection case No. 22 which objection was heard and dismissed on 3.10.2007. PW1 avers that no appeal has ever been preferred against that decision.

9. PW1 avers that the 3rd defendant has to date unjustly failed, refused and / or neglected to implement the A/R objection decision hence this suit. PW1 prays for judgment against the defendants jointly and severally in terms of the prayers in his further amended plaint dated 22nd September, 2017.

10. PW2, Nahason Bundi M'Murithi told the court that he was a peasant farmer whose land neighboured the plaintiff's land. He asked the court to adopt his witness statement dated 28th day of April, 2016 as his evidence in this suit. Largely, point by point and paragraph by paragraph PW2 supports the plaintiff's evidence.

11. PW3, Njerul thura Kangai, told the court, that he was a peasant farmer whose land neighboured the plaintiff's land. By and large, point by point and paragraph by paragraph, PW3 supports the plaintiff's evidence.

12. I frame the issues for determination as: (a) whether or not the defendants had their Objection in A/R objection Case NO. 22 dismissed on 3.10.2007. (b) if the objection in Objection Case No. 22 was dismissed has the 3rd defendant unjustly failed, refused and/or neglected to implement the said A/R objection decision.

13. I have considered the parties' pleadings including the defences filed by the 1st and other defendants. I do note that the 2nd defendant did not file a defence. I have also considered the plaintiff's reply to the 1st Defendants Statement of Defence.

14. I find that the assertions made by the plaintiff and his two witnesses have not been controverted. Indeed the 2nd defendant did not file a defence. All the defendants failed, refused or neglected to come to court to participate in the hearing fixed for 21st November, 2017.

15. It is found that the 1st and 2nd defendants objection in A/R Objection No. 22 was heard and dismissed on 3.10.2007 and no appeal against that decision was instituted. I also find that the 3rd defendant has unjustly failed, refused and / or neglected to implement the said A/R objection's decision.

16. In the circumstances, I enter judgment for the plaintiff against the defendants jointly and severally in the following terms:

a) I issue an order for cancellation of the subdivisions of the plaintiffs Land P/No. 1198, IRUNDUNI

ADJUDICATION into land P/NO.1477 and land P/NO.1322, IRUNDUNI ADJUDICATION SECTION recorded to the 1st and 2nd defendants respectively, and reinstatement of the same to its original P/NO. 1198, IRUNDUNI ADJUDICATION SECTION.

b) I issue a permanent injunction restraining the 1st and 2nd defendants, their family members, servants and agents from trespassing onto the plaintiff's L.R. Land P/No. 1198, Irunduni Adjudication Section.

c) Costs of the suit, plus interest thereon at court's rates are awarded to the plaintiff.

Delivered in open court at Chuka this **19th day of December, 2017** in the presence of:

CA: Ndegwa

M'Arichia Mwithiga – plaintiff

Romano Muthengi 1st defendant

P. M. NJOROGI

JUDGE



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