



Case Number:	Environment and Land Case 18 of 2019 Formerly Marimanti ELC 48 of 2017 Formerly Chuka ELC 191 of 2017
Date Delivered:	16 Dec 2019
Case Class:	Civil
Court:	Environment and Land Court at Chuka
Case Action:	Ruling
Judge:	Peter Muchoki Njoroge
Citation:	Dalco Trading Centre v Kamaita Imathiu & 3 others [2019] eKLR
Advocates:	Siagi for the Plaintiff M/S Kithaka for the 3rd Defendant Kiongo for the 4th Defendant
Case Summary:	-
Court Division:	Environment and Land
History Magistrates:	-
County:	Tharaka Nithi
Docket Number:	-
History Docket Number:	-
Case Outcome:	Application allowed
History County:	-
Representation By Advocates:	One party or some parties represented
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. 18 OF 2019**

**FORMERLY MARIMANTI ELC 48 OF 2017**

**FORMERLY CHUKA ELC 191 OF 2017**

**DALCO TRADING CENTRE.....APPLICANT/PLAINTIFF**

**VERSUS**

**KAMAITA IMATHIU.....1<sup>ST</sup> RESPONDENT/DEFENDANT**

**LAWRENCE N. MUGAMBI.....2<sup>ND</sup> RESPONDENT/DEFENDANT**

**MOHAMED HASHIN JAMAH.....3<sup>RD</sup> RESPONDENT/DEFENDANT**

**LAND REGISTRAR, THARAKA NITHI COUNTY.....4<sup>TH</sup> RESPONDENT/DEFENDANT**

**RULING**

1. This application is dated **4<sup>th</sup> December, 2019** and it has been brought to court under sections 1A, 1B, 3A and 63 E of the Civil Procedure Act, Order 51 of the Civil Procedure Rules, Section 7A of the Evidence Act and any other enabling provisions of the law.

2. The application seeks the following orders:

1. That the Land Registrar, Ministry of Lands Chuka, the 4<sup>th</sup> defendant herein be ordered to physically avail in court during the hearing of this suit the following original documents in respect of L.R.NO. **S.Tharaka/Tunyai 'A'38 measuring 12.5 Hectares** the suit premises herein the same being:-

a. The Daybook Number and/or presentation book number in respect of the lodgment of the Application for Registration of the transfer of the suit premises from the 1<sup>st</sup> defendant to the 2<sup>nd</sup> defendant.

b. The Register showing the recording of the Daybook Number as stated in prayer 1 (a) going backwards and, forward from the point of the entry of the Daybook Number in issue for a period of two months.

c. The valuation Form in respect of the transfer of the suit land from the 1<sup>st</sup> defendant to the 2<sup>nd</sup> defendant as duly filled or drawn by the Government Valuer for the purposes of Stamp Duty payable for the transfer of the suit land as aforesaid.

d. The Land Control Board Consent sanctioning the transfer of the suit land from the 1<sup>st</sup> defendant to the 2<sup>nd</sup> defendant.

e. The official Government receipts issued by the Land Registry, Chuka to complete the transfer of the suit land from the 1<sup>st</sup> Defendant to the 2<sup>nd</sup> defendant.

2. That the Land Registrar Ministry of Lands Chuka, the 4<sup>th</sup> defendant herein be ordered to, within seven (7) days of being so ordered and serve, supply the Advocates on record for the plaintiff with the certified photocopies of all the documents mentioned in prayer No. 1.

3. That the Land Registrar Chuka, the 4<sup>th</sup> defendant be ordered to supply to the Court and the Advocates for the plaintiff a list of serial Numbers of ten (10) certificates of titles issued before and after the certificate of title in respect of the suit land complete with the Land reference Numbers to which they relate.

4. That the costs of this application be costs in the cause.

3. The application has the following grounds:-

a. The suit land did change hands in the manner the plaintiff contends is fraudulent and/or unlawful.

b. The suit land did change hands in the manner the plaintiff contends without the necessary lawful and mandatory supportive documents.

c. The 4<sup>th</sup> defendant has declined to avail to the plaintiff copies of any documents supporting the changes.

d. The 4<sup>th</sup> defendant in spite of being served with all the necessary pleadings has failed to answer and provide the necessary documents.

e. The 4<sup>th</sup> defendant is the only lawful custodian of the named documents.

f. The suit SHALL not appropriately proceed in the absence of the documents.

g. The constitutional rights of the plaintiff are at stake and/or have been adversely affected and the availability of this documents SHALL monumentally assist the court and the parties.

h. All entries on the land's "Green Cards" affecting change of proprietary rights **MUST** be supported by supporting and/or sanctioning documents.

i. An interlocutory judgement in matters of this nature will legally create an unnecessary prejudice.

4. The application is buttressed by the affidavit of Patrick Karani sworn on **4<sup>th</sup> December, 2019**.

5. When the application was heard on **16<sup>th</sup> December, 2019**. Mr. Siagi told the court that in the greater interest of justice the application ought to be allowed. Mr. Kiongo, Senior Litigation Counsel, for the 5<sup>th</sup> respondent told the court that the 5<sup>th</sup> respondent had failed to trace the required documents except the Green Card. He requested the court to grant him 30 days so that the Land Registrar could strive to obtain the apposite documents. He told the court that he would annex the available documents to his compliance documents and serve them upon the other parties.

6. The following orders are issued:-

a. The 5<sup>th</sup> defendant is granted 30 days to fully comply with order 11 CPR, which compliance, as undertaken by Mr. Kiongo, his counsel, should include available documents as prayed in this application.

b. During hearing of the suit, the Land Registrar, Chuka, will come to court to produce apposite documents.

c. Parties are to come to court for directions on **4<sup>th</sup> February, 2020**.

7. Costs shall be in the cause.

**Delivered in open Court at Chuka this 16<sup>th</sup> day of December, 2019** in the presence of:

CA: Ndegwa

Siagi for the Plaintiff

M/S Kithaka for the 3<sup>rd</sup> Defendant

Kiongo for the 4<sup>th</sup> Defendant

**P. M. NJOROGI,**

**JUDGE.**



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