



Case Number:	Environment and Land Case E004 of 2021 (OS)
Date Delivered:	10 Nov 2021
Case Class:	Civil
Court:	Environment and Land Court at Chuka
Case Action:	-
Judge:	Charles Yano Kimutai
Citation:	Peterson Kenneth Mugo M'muga & 9 others v Celestina Karimi Miriti & another [2021] eKLR
Advocates:	Mr. Muriithi for the Plaintiffs Ms. Kaaria for the 2nd Defendant.
Case Summary:	-
Court Division:	Environment and Land
History Magistrates:	-
County:	Tharaka Nithi
Docket Number:	-
History Docket Number:	-
Case Outcome:	Plaint ordered
History County:	-
Representation By Advocates:	Both 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. E004 OF 2021 (OS)

PETERSON KENNETH MUGO M'MUGA.....1ST PLAINTIFF
ALEXANDER KIRUJA MIRITI.....2ND PLAINTIFF
ROBERT MURITHI CRISPO.....3RD PLAINTIFF
JOHN NJAGI MIRITI.....4TH PLAINTIFF
JUSTUS MBAE MIRITI.....5TH PLAINTIFF
FERDINARD MBABU MIRITI.....6TH PLAINTIFF
LINET KARIMI MIRITI.....7TH PLAINTIFF
SILAS GITONGA MIRITI.....8TH PLAINTIFF
JAMES MUGO MIRITI.....9TH PLAINTIFF
CIRIAKA TIRINDI.....10TH PLAINTIFF

VERSUS

CELESTINA KARIMI MIRITI (SUED AS THE ADMINISTRATIX OF THE
ESTATE OF THE LATE MURUNGI KING'ANG'A.....1ST DEFENDANT
DOMISIANO NJERU MUNGIRIA (SUED AS THE ADMINISTRATOR OF THE
ESTATE OF THE LATE MUNGIRIA M'RUGUCHI).....2ND DEFENDANT

RULING

1. This matter was scheduled for hearing today, **10th November, 2021**. However, Mr. Muriithi, advocate for the Plaintiffs informed the court that he was not ready to proceed for the reason that having gone through the defence filed, he was of the view that an order be made for the County Surveyor, Tharaka Nithi to visit the locus in quo and confirm which parcel of land the Plaintiffs are in occupation of, and thereafter file a report in court. Mr. Muriithi therefore applied for an adjournment and further made an oral application for the court to direct the County Surveyor to visit the suit parcels to establish which parcel the Plaintiffs are in occupation of, and thereafter file a report.

2. On her part, Ms. Kaaria advocate for the 2nd defendant informed the court that though they were ready to proceed with the hearing, they were informed that the Plaintiffs would be applying for an adjournment. On the application for a site visit by the

surveyor, the 2nd Defendant's counsel objected to the same, and urged the court to direct the Plaintiffs to file a formal application to enable them respond, and for the court to make a determination thereafter. The 2nd defendant's counsel also applied for leave to file a further affidavit in reply to the supplementary affidavit filed on **9th November, 2021** by the Plaintiffs, and served on them on the same date.

3. Mr. Muriithi submitted that filing a formal application will further delay the matter. He however stated that they were ready to file a formal application within **3 days** if directed so by the court. He however, had no objection to leave being granted to the **2nd Defendant** to file a further affidavit in response to the supplementary affidavit filed on **9.11.2021**.

4. The court has considered the submissions made. The court has also perused the court record. It is noted that on **25th October, 2021**, the court declined to grant the Plaintiffs leave to file a supplementary affidavit. The court noted that on **28th September, 2021**, the Plaintiffs were granted leave to file and serve a further affidavit within **7 days**. However, the Plaintiffs did not file the said further affidavit within the time granted or at all, and no good reason was given for their failure to do so. The court then fixed the matter for hearing on **10th November, 2021**.

5. The Plaintiffs filed a supplementary affidavit on **9th November, 2021**. The issue that I will deal with is whether the supplementary affidavit should be struck out for having been filed without leave of the court.

6. The record shows that this court declined to grant the Plaintiffs leave to file a further or supplementary affidavit on **25th October, 2021**. This is because the Plaintiffs had been granted time to file the said document on **28th September, 2021**, but they failed to file the same within the **7 days** that were granted or at all. The Plaintiffs have now proceeded to file a supplementary affidavit on **9th November, 2021** and the same was filed without leave of the court. Having being declined leave, the Plaintiffs could not disregard the orders of court and proceed to file documents without leave of court and contrary to the orders made by the court. Having filed the supplementary affidavit without the leave of the court, I find that the supplementary affidavit dated **9th November, 2021** and filed on the same day is a nullity and the same is hereby struck out for having been filed without the leave of the court.

7. The last issue that I will deal with is whether the County Surveyor should be ordered to visit the locus in quo and establish which parcel of land the Plaintiffs are in occupation of, and thereafter, file a report in court. Considering that the envisaged report may assist the court in arriving at a just decision, and in order not to delay the matter any further through the filing of a formal application, and further considering that no prejudice will be suffered by any party because of the envisaged visit, I will allow the Plaintiffs application to have the County Surveyor, Tharaka Nithi visit the suit properties to establish which parcel the Plaintiffs are in occupation of and thereafter file a report in court.

8. In the premises, and for the reasons I have given above, I make the following orders:

a) The supplementary Affidavit dated **9th November, 2021** and filed on the same date by the Plaintiffs be and is hereby struck out for having been filed without leave of the court.

b) This matter be and is hereby taken out and the same is adjourned at the instance of the Plaintiffs.

c) An order is hereby made directed to the County Surveyor, Tharaka Nithi, to visit the suit parcels and determine which parcel the Plaintiffs are in occupation of and thereafter file a report in court within **30 days**.

d) The Plaintiffs will meet the costs of the surveyor.

e) The Plaintiffs will also pay today's costs to the 2nd defendant as well as Court Adjournment Fees.

f) The matter is fixed for mention on **14.12.2021** to confirm filing of the surveyor's report and for further directions.

9. Orders accordingly.

DATED, DELIVERED AND SIGNED AT CHUKA THIS 10TH DAY OF NOVEMBER, 2021 IN THE PRESENCE OF:

C/A: NDEGWA

MR. MURIITHI FOR THE PLAINTIFFS

MS. KAARIA FOR THE 2ND DEFENDANT.

C. K. YANO,

JUDGE.



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