



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT CHUKA
CHUKA ELC CASE NO. 07 OF 2017
FORMERLY MERU ELC CASE NO. 35 OF 2015

SUSY CIAMWARI EUSTACE.....PLAINTIFF

VERSUS

KITHINJI NJOKA.....1ST DEFENDANT

MURITH NJOKA.....2ND DEFENDANT

MUTEMBEI NJOKA.....3RD DEFENDANT

RULING

1. This application is dated 24.7.2017 and seeks orders:

1. THAT the Honourable Court be pleased to certify this application urgently owing to its urgent nature and hear the same without delay.
2. THAT the Honourable Court be pleased to set aside its order dated 28th February, 2017 and reinstate the plaintiffs Originating Summons and hear the said originating Summons on merit.
3. THAT the costs of this application be in the cause.

2. The application is supported by the affidavit of the applicant sworn on 24.7.2017 and has the following grounds:

1. The plaintiff filed the Originating Summons in this case on 5th day of June, 2015 and she duly served the defendants.
2. The defendants did not file their defence and after making several attempts to have the matter prosecuted, the plaintiff was informed from the Meru High Court Registry that the Court file could not be traced.
3. On **24th day of June 2017**, the plaintiff again went to the High Court Registry at Meru to fix the case for hearing but she was informed that the court file had been transferred to the Environment and Land Court at Chuka.

4. When the plaintiff went to **Chuka Law Court on 27th day of June 2017**, she indeed found that

her case **Meru ELC No.35 of 2015 (OS)** had indeed been transferred to **ELC Court at Chuka** and allocated **Chuka ELC Case NO. 7 of 2017**.

5. Upon perusal of the said court file at Chuka, the plaintiff/applicant noted that from the court file that vide the letter dated **27th day of January 2017** addressed to the plaintiff, an order signed by the judge on **23rd January 2017** and undated letter by the Deputy Registrar Meru High Court was addressed to the plaintiff indicating that the court file had been transferred to **Chuka ELC Court**.

6. The plaintiff has never received the said letters and the court order and in fact, there is nothing in the court file to show how they were dispatched and / or served to the plaintiff or the method used.

There is no affidavit of service to show the mode of service to the plaintiff.

7. The court record further shows that there is a carbon copy of a letter addressed to the plaintiff to show cause why the plaintiff's suit should not be dismissed dated 8th day of February, 2017 signed by the Deputy Registrar Meru High Court.

8. There is nothing to show how the said Notice to show cause was dispatched to the plaintiff and there is no affidavit of service to show that the plaintiff was served with the said Notice to show cause.

9. Equally the plaintiff has never received the said Notice to Show Cause dated **8th day of February, 2017**.

10. This suit was dismissed on **28th day of February, 2017** without the plaintiff's knowledge because she was never informed that the suit had been transferred from **Meru E & L Court to Chuka E & L Court**.

11. The plaintiff was also never served with Notice to show cause why her case should not be dismissed and she has never received any letter and / or any document from the court relating to transfer and subsequent dismissal of her case.

12. The suit herein relates to land and it is only just and fair that the same be reinstated and be heard on merit.

13. If the suit herein Is not reinstated the plaintiff shall suffer irreparable loss and she will lose her land.

14. The plaintiff will fast track her case diligently once it is reinstated to ensure that the same is heard without delay.

15. The plaintiff / applicant is a widow who is ailing and her only source of livelihood is one **(1)** of land parcel **No.MAGUMONI/THUITA/494** where she also lives with her family.

16. No prejudice will be occasioned to the defendants if this suit is reinstated as they have expressed their willingness to give me the one **(1)** acre of the land and they have also not filed any Memorandum of Appearance or defence.

17. The plaintiff also intends to consolidate this case with **Chuka ELC Case No. 15 of 2017** once this case is reinstated.

3. In his submissions Mr. Nyamu Nyaga, for the applicant was categorical that the plaintiff did not receive Notice to Show Cause and was not aware that the file for this suit had been transferred to Chuka from Meru. He laid reliance on the grounds on the face of the application and the apposite supporting affidavit.

4. I have considered the submissions and the pleadings proffered herein. I am persuaded to vacate the dismissal order, I issued on 28.2.2017.
5. Consequently, this suit is reinstated.
6. The plaintiff is ordered to fully comply with order 11,CPR within 30 days of today and the defendants should do so within 30 days after receipt of the plaintiff's compliance documents.
7. The plaintiff's advocate should serve the defendants with the orders issued by the court today vide this ruling, and also in the court's file, within 14 days of today.
8. Costs shall be in the cause.
9. It is so ordered

Delivered in open court at Chuka this **26th day of June, 2017** in the presence of:

CA: Ndegwa

Nyamu Nyaga for the plaintiff

P.M. NJOROGE

JUDGE