

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

CIVIL CASE NO. 12 OF 2012 (O.S)

CHARLES MURIUKI M'MWARI.....PLAINITFF

VERSUS

M'MBOGORI M'AMBUTU.....DEFENDANT

RULING

This suit was slated for hearing on 6th May, 2014. Court records show that the hearing date was obtained in the presence of both parties. During the date fixed for the hearing, the plaintiff was absent. The defendant's advocate made an oral application for the plaintiff's suit to be dismissed under the provisions of order 12 Rule 3, Civil Procedure Rules. The advocate complained that the defendant had been waiting in court since morning and now that it was five minutes to one O'clock, it was clear that the plaintiff was not serious in as far as the prosecution of his case was concerned.

I have looked at the court records. They show that the plaintiff has been punctilious in his attendance in court on fixed dates. He should, therefore, be given the benefit of doubt, as the court does to know why he was not in court. The court also takes judicial note of the fact that the plaintiff, a lay man, represents himself. The court cannot authenticate the signature of the plaintiff but a cursory look at the signature purportedly signed by the plaintiff at the registry on 6.3.2014 when the apposite hearing date was fixed raises same suspicion. Even if it is confirmed that this is his genuine signature, his past court attendance record merits his being allowed a chance to have this case heard on its merits.

I dismiss the defendant's oral submission. No costs are awarded to any of the parties.

It is so ordered.

Delivered in Open court at Meru this 24th day of July, 2014 I the presence of:

Cc Daniel/Lilian

Parties not in court

P. M. NJOROGE

JUDGE