



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT CHUKA

CHUKA ELC CASE NO 108 OF 2017

FORMRLY MERU ELC CASE NO. 12 OF 2009

JOHNSON NKONGE O. M'RUCHA.....PLAINTIFF

VERSUS

JOHN PHARES NJERU M'ITHAARA.....DEFENDANT/RESPONDENT

ABDUL RASHID MBAE MAGAMBO....INTERESTED PARTY/APPLICANT

RULING

1. This application is dated **1st October, 2018**. It seeks the following orders:

1. That application be certified a urgent and heard on priority basis.
2. That this honourable court be pleased to set aside the dismissal of the herein Interested Party's case and reinstate the same for hearing.
3. That the costs of this application be provided for.

2. The application is supported by the affidavit of Abdul Rashid Mbae Magambo and has the following grounds:

- a) That the Interested Party has a case which ought to be heard on merit.
- b) That he is a bonafide purchaser for the land in dispute and he has paid the consideration in full.
- c) That the non-attendance of the Interested party in court on the day of the hearing was as a result of hypertension condition and called in sick.
- d) That the Interested party has a good case and should be allowed to ventilate the same.

3. In his affidavit sworn on **1st October, 2018**, the applicant admits that he knew that this suit was going to be heard on **24th September, 2018** but he could not attend court as he had a hypertensive condition. He says that he stands to suffer great loss as he is a purchaser for value of the suit land.

4. As this application may have the ramification of messing this court's calendar, I find it necessary to give a ruling immediately. Miss Munga, the applicant's advocate, asked the court, in the interest of justice, to reinstate the suit so that the applicant could be heard. Mr. K'Opere, for the defendants, opposed the application on the basis that the suit had already been dismissed.

5. In the interest of justice, I will reinstate the suit so that hearing of the suit can proceed as scheduled on **3rd October, 2018**. However, if the applicant does not turn up to give his evidence on **3rd October, 2018**, his suit will once again stand dismissed in terms of Order 12 rule 1 of the Civil Procedure Rules. Hearing of the suit will proceed as scheduled.

6. I observe that advocates, being officers of the court, are aware of the Judiciary's policy that suits over 5 years in age ought to be disposed of by **December, 2018**. This suit is 10 years old. Advocates and parties should cooperate to actualize this noble endeavour. Justice delayed is justice denied.

7. The suit is reinstated on condition that the applicant comes to court on **3rd October, 2018** to give his evidence. If he will not be in court, the suit will remain dismissed.

8. It is so ordered.

Delivered in open Court at Chuka this **3rd day of October, 2018** in the presence of:

CA: Ndegwa

Miss Munga for the plaintiffs

Mr. K'Opere for the defendants

P.M. NJORGE

JUDGE