



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT CHUKA

CHUKA LAND CASE NO 13 OF 2017

FORMERLY MERU ELC CASE NO.04 OF 2016

MAKEMBO KAYA.....PLAINTIFF

VERSUS

SILAS NYAGA.....1ST DEFENDANT

JOSEPH MUGAMBI KAMUYU.....2ND DEFENDANT

ELIJAH MUTHENGI KAMUYU.....3RD DEFENDANT

GRACE GITHINJI KAMUYU.....4TH DEFENDANT

RUTH MWENDE.....5TH DEFENDANT

JACOB MUTETHIA GAKIRORU.....6TH DEFENDANT

JOHN KAMUNYU GAKIRORU.....7TH DEFENDANT

RULING

1. This application is dated **20th June, 2018** and seeks the following orders:

1. That the dismissal order of **6.2.2018** be set aside.
2. That the suit be given a fresh hearing date.
3. That the costs for and incidental to this application be in this cause.

2. The application has the following grounds:

- a) That neither the plaintiff nor his advocate was aware of the hearing date set for **6.2.2018** as the said date had not been served upon the plaintiff's advocates.
- b) That this being a land dispute, the plaintiff will suffer irreparably if the dismissal order is not set aside.
- c) That the defendants will not be prejudiced in any way.

3. This application is supported by the affidavit of the applicant's advocate sworn on **20th June, 2018** which states:

I, B. G. KARIUKI of P. O. BOX 639-60600 MERU do make oath and state as follows:

1. That I am an advocate of the High Court of Kenya and I am having the conduct of this suit on behalf of the plaintiff and therefore

competent to swear this affidavit.

2. That this suit had been filed for hearing on **25.10.2017** which fell on a public holiday.
3. That on **12.6.2018**, I sent my clerk Mr. Mwenda to check the position of my cases at Chuka registries and he reported back to me that the next hearing date was set for **6.2.2018** (sic) but this date was not served on my office.
4. That consequently neither I nor my client appeared in court and the suit was dismissed.
5. That my absence and that of my client was not deliberate and I have confirmed with him that he is still interested in pursuing the case.
6. That unless the dismissal order is set aside, the plaintiff will suffer irreparable damages.
7. That I make this application in support of the application annexed herein.
8. That the contents of this affidavit are true to the best of my knowledge, information and belief.

4. When the application came up for interpartes hearing on **25th July, 2018**, Miss Wambugu, for the applicant asked the court to allow the application because it was not opposed. Mr. Mark Muriithi for the defendants told the court that the defendants were not opposed to the application.

5. In the circumstances and in the interest of Justice, this application is allowed.
6. Costs shall be in the cause.
7. Parties are ordered to come to court for **HEARING** of the suit on **16th October, 2018**.
8. It is so ordered

Delivered in open Court at Chuka this **1st day of October, 2018** in the presence of:

CA: Ndegwa

Miss Wambugu for plaintiff

Muriithi for the defendants

P. M. NJOROGI,

JUDGE.