



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT CHUKA

CHUKA ELC CASE NO. 265 OF 2017

FORMERLY MERU ELC. 79 OF 2014

NJAGI KANAMPIU (SUING AS NEXT FRIEND

JOSEPH KTHENYA KANAMPIU).....PLAINTIFF/APPLICANT

VERSUS

KELLEN NCHUNGUNI RIUNGU & 2 OTHERS....DEFENDANTS

RULING

1. This application has been brought to court under a certificate of urgency. It is dated 2nd October, 2018. It seeks orders:

1. That the application be certified as urgent and be heard exparte in the first instance.
2. That the honourable court be pleased to set aside its orders of 1st October, 2018 dismissing the applicant's suit for non attendance and thereafter reinstate the same.
3. That cost of this application be in the cause.

2. The application has the following grounds:

- a. The applicant's advocate inadvertently arrived late on the hearing date.
- b. The failure by the advocate and the applicant not to be in court when case was recalled for hearing was not deliberate.
- c. The applicant will expeditiously prosecute the case once it is reinstated.
- d. That no prejudice will be suffered by the respondent.
- e. The non attendance of the applicant and the advocate is highly regrettable.

3. It is supported by the affidavit of the applicant sworn on 2nd October, 2018 which states:

1. That I am the plaintiff/applicant herein and hence competent to swear this affidavit.
2. That my case was set for hearing on 1st October, 2018.
3. That when the case was called out around 9.20am, I went out of the court room to call my advocate to inform him what the court had directed.
4. That I am illiterate, I don't understand Swahili language well and I understood the clerk to have stated that the case would proceed at 10.00am.

5. That the case was called out again at 9.45am when I was outside attempting to top up my airtime so as to call my advocate who was travelling from Nairobi.

6. That my advocate arrived at 9.50am when the case had just been dismissed.

7. That when I arrived in the court a few minutes to 10.00am and I was shocked to be told by my advocate and the court clerk what had transpired.

8. That I humbly pray that the suit be reinstated as I have struggled with it since 2011.

9. That I am a poor litigant and hardly get money to pay my advocate who has been proceeding with this matter on pro-bono basis.

10. That I undertake to expeditiously prosecute this case to its logical conclusion.

11. That I highly regret any inconvenience which may be occasioned to the honourable court.

12. That what is deponed to herein above is true to the best of my knowledge, information and belief.

4. I have considered all the circumstances. I do not agree that it is a satisfactory reason that advocates and litigants should come to court late and then ask the court to exercise its discretion to reinstate their suits in their favour.

5. However in the interest of justice I will reinstate the suit on condition that the parties will be in court without fail during all future hearing dates. If the parties do not come to court during the next hearing date, the suit will automatically remain dismissed. The applicant is ordered to serve the orders issued by the court today upon all the defendants within 5 days of today without fail.

6. Parties are directed to come for the hearing of this suit on 23rd October, 2018.

7. is so ordered

Delivered in open Court at Chuka this **4th day of October, 2018** in the presence of:

CA: Ndegwa

Miss Ngigi h/b Mugambi Njiru for the applicant

P.M. NJOROGÉ

JUDGE