

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

HCCC. SUIT NO. 61 OF 2016 FORMERLY NO. 126 B OF 2009

FRANCIS MURITHI RUTERE (Suing as administrator of the estate of

M'RUTERE M'MUNYAGE alias RUTERE MUNYUNGI.....PLAINTIFF

VERSUS

JULIUS MUTWIRI NJUKI.....1ST DEFENDANT

PHIANEAS MUTWIRI.....2ND DEFENDANT

RULING

I find that the Court's record indicate that today's date was taken as a date for hearing. It appears that defence side has not been vigilant in ensuring that the case is concluded. The records indicate that on 13.05.16, the Court had noted that defence had taken a whole year to comply with order 11. Since they had not done so they were given a further 30 days to comply, Plaintiff getting the permission to have the matter fixed for hearing at the registry. The registry did not give Plaintiff a date for hearing so on 05.12.16 matter was again mentioned in Court Muthama was present h/b for Mbaya for Defendant. Again Defendant prayed for time to comply . They were given 30 days. Plaintiff was again given permission to set the suit down for hearing . Plaintiff took today's date.

Today, Mr. Mbaya appeared before the Court in the morning and he indicated that the matter was not for hearing and that it was coming up for an application to consolidate suits. This Court had however informed Mr. Mbaya that the matter was coming up for hearing of the main suit what is opponent is that Defendant were present when their counsel was addressing the Court . They never informed the Court that the said Counsel, Mr. Mbaya was having differences with them. I find that this is an opportunity to obtain an adjournment. I disallow the same. I direct the matter to proceed to hearing . However the Court will not take defendants testimony today. Defendants will be given an opportunity to prepare for their side of the case. Reference is made to Section 1A (3) and Section 1B of the Civil Procedure Act and article 159 and 50 of the Constitution.

Delivered in open Court at Meru this 20th day of February, 2017 in the presence of:

CA: Mungai /Kananu

Carpeters Mbabu for the Plaintiff

Francis Murithi Rutere -Defendant

L.N. MBUGUA

JUDGE