



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT CHUKA

CHUKA ELC CASE NO 155 OF 2017

FORMERLY MERU ELC CASE NO. 106 OF 2012

DAVID KINYUA BEDFORD.....PLAINTIFF

VERSUS

CO-OPERATIVE BANK OF KENYA.....DEFENDANT

RULING

1. This application is dated **3rd May, 2018** and seeks orders:

1. That the honourable court be pleased to set aside/review the orders issued on dismissing this suit for want of prosecution.
2. That consequently the honourable court be pleased to reinstate by (sic) his matter for hearing on merit.
3. Costs be in the cause.

2. The application is supported by the affidavit of David Kinyua Bedford, the applicant sworn on **3rd May, 2019** and has the following grounds:

- a) That this application is meritorious as the parties are negotiating out of court.
- b) That reinstating this suit shall facilitate fast and affective negotiation of this suit.
- c) That I am ready to settle what is owed to the bank at any moment now.
- d) That no party shall be prejudice (sic) if the orders are granted.
- e) That there is sufficient reason why this application ought to be allowed.

3. During the date for interpartes hearing Advocate Kirimi, representing the plaintiff/applicant, told the court that the parties have agreed to have the application allowed. Advocate Gikunda, holding brief for Advocate Mugambi, for the defendant/respondent, told the court that he had limited instructions and left it to court to make its decision.

4. I note that in his grounds on the face of the Notice of Motion, the applicant is unequivocal that he is willing to settle the debt he owes the bank and that the parties are negotiating a settlement. In the circumstances, I am hesitant to make this court a negotiating fulcrum or forum. I opine that the parties are at liberty to negotiate and settle this matter any time they wish.

5. I note that this application is dated **3rd May, 2018** and was filed on **4th May, 2018**. It is, however, being prosecuted one year later through a Certificate of Urgency dated **8th March, 2019**. This delay has not been explained. The suit itself was filed on **4th June, 2012, 7 years ago**.

6. I refuse to allow this application.

7. In the circumstances, the application is dismissed.

8. I issue no order as to costs in as far as this application **ONLY** is concerned.

9. It is so ordered.

Delivered in open Court at Chuka this 6th day of May, 2019

in the presence of:

CA: Ndegwa

Kirimi for the Plaintiff/Applicant

Gikunda Anampiu h/b Mugambi for the Defendant/Respondent

P.M. NJORGE

JUDGE