



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT CHUKA**

**CHUKA ELC CASE NO. 173 OF 2017**

**FORMERLY MERU ELC. 186 OF 2011**

**GODFREY MATE.....PLAINTIFF**

**VERSUS**

**THE HONOURABLE ATTORNEY GENERAL.....DEFENDANT**

**RULING**

1. This application is dated **8<sup>th</sup> January, 2018** and seeks orders:

1. That this honourable court be pleased to review its judgment delivered on **20<sup>th</sup> December, 2017** by setting it aside.
2. That the suit herein be reinstated for hearing.
3. That cost be in the cause.

2. The application has the following grounds:

1. There are sufficient reasons for this honourable court to review its judgment.
2. The applicant stands to suffer loss and damages unless the judgment delivered on **20<sup>th</sup> December, 2017** and not review and set aside (sic).
3. It is only fair and just that the applicant be given an opportunity to have his case heard on merit.
4. The applicant is acceptable to whatsoever conditions that this honourable court may impose with a view to expedite the hearing and disposal of the suit.

3. This application is supported by the affidavit of **DAVID NJERU NYAGA**, the plaintiff's advocate which states as follows:

**"I, DAVID NJERU NYAGA of P. O. Box 576553, 00100** Nairobi do hereby make oath and state as follows:

1. That I am an advocate of the high court of Kenya and having the conduct of this matter on behalf of the plaintiff.

2. That I am competent to swear this affidavit.
3. That I have had the conduct of the suit on behalf of the plaintiff which case we filed in Meru High Court as **H.C.C. No. 186 of 2011**.
4. That we have appeared in the Meru Court on several occasions with a view to settle down the suit for hearing.
5. That the last date given in the file in Meru was for mention on **3<sup>rd</sup> June, 2015** for pre-trial purposes.
6. That we subsequently made efforts to fix a date for hearing but we were advised that there were no dates available at the Meru registry.
7. That hereafter, I used to send my representatives to follow-up on the matter but the file was alleged to have been transferred to CHUKA Court and that we would receive notice of the new case number from the Chuka High Court.
8. That we waited for the notice from CHUKA Court advising on the new case number but to no avail.
9. That owing to the above, we had no access to the court file and thus were unable to take any action towards prosecuting the suit.
10. That the situation was further complicated by the fact that in late 2016 our client was taken ill and was in and out of hospital, later in mid 2017 our client had to be treated in India where he was admitted for a long period of time (annexed & marked "DNN 1" are copies of the treatment notes.)
11. That upon discharge our client had to attend clinic both locally and in India
12. That unfortunately our client died on 31<sup>st</sup> October, 2017 while undergoing treatment at Nairobi Hospital. (Annexed & marked "DNN2" are copies of burial permit and Newspaper advertisement.)
13. That the legal representative (sic) herein are now pursuing the death certificate with a view to apply for letters of administration for purposes of substitution the deceased plaintiff.
14. That on or about the **8<sup>th</sup> of December, 2017** we were served with a notice to show cause pursuant to order 17 Rule 2(1) of the Civil Procedure Rules.
15. That on **18<sup>th</sup> December, 2017** we did send a representative to explain to this honourable court why this suit has not been prosecuted, we were not able to furnish the court with the above evidence as we had not managed to get the legal representative to the deceased.
16. That this honourable court delivered its judgment on **20<sup>th</sup> December, 2017** whereby it dismissed the suit. (Annexed and marked "DNN3" is a copy of the decree).
17. That we feel that there are sufficient reasons to convince this honourable court to review its above judgment.
18. That going by the foregoing and bearing in mind that, the honourable court did not inform us of the transfer of the case from Meru High Court to Chuka High Court, it is only fair and just that the applicant be granted a chance to prosecute his case.
19. That the applicant is acceptable to whatsoever conditions that this honourable court may impose towards expediting on prosecution of this case.

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

4. When the application was heard interpartes on **18.1.2017**, the plaintiff's advocate Mr. Nyaga told the court that he was relying on the supporting affidavit which had been filed. He told the court that when the suit was transferred from Meru he and his client were not informed. He told the court that he only came to know that the suit had been transferred to Chuka when he received Notice to Show Cause why the suit should not be dismissed for non-prosecution in terms of Order 17 Rule 2(1) of the Civil Procedure Rules. He also told the court that the plaintiff had been unwell and referred the court to medical records which he had annexed to this application.

5. Miss Mbaikiata representing the Attorney General opposed the application. She submitted that the advocate had at paragraph 14 of his supporting affidavit admitted that he had received Notice to Show Cause why the suit should not have been dismissed, and yet he refused to come to court. She also told the court that the advocate was indolent in not substituting the plaintiff expeditiously.

6. Mr. Nyaga responded that he could not substitute the plaintiff as the suit was non-existent following its dismissal. He asked the court to reinstate the suit.

7. I agree with the plaintiff's advocate, that his advocate could not have him substituted when the suit had been dismissed.

8. The plaintiff's advocate has not explained why he did not come to court on **18<sup>th</sup> December, 2017** to show cause why the suit should not have been dismissed for want of prosecution **AND** yet in paragraph 14 of his supporting affidavit he admits that the said Notice had been served upon him. He is being uneconomical with the truth when he asserts that on **18<sup>th</sup> December, 2017**, he had sent a representative to court. He had not.

9. In my ruling which dismissed this suit at paragraph 5, I noted that the plaintiff had not taken any step in this matter since **5.2.2015** when he had filed a letter asking the defendant to send his representative to court. In my ruling I noted that the last step had been taken 3 years before the suit was dismissed.

10. I do note that all the medical records annexed by the plaintiff's advocate are dated between **May and October, 2017**. No explanation is proffered to explain why no step had been taken before **May, 2017**.

11. I find that no satisfactory explanation has been proffered as to why I should review my ruling dated **20<sup>th</sup> December, 2017** which dismissed this suit.

12. In the circumstances, this application is dismissed.

13. Costs are awarded to the defendant.

14. It is so ordered.

Delivered in open court at Chuka this **14<sup>th</sup> day of February, 2018** in the presence of:

CA: Ndegwa

Parties are not in court

**P.M. NJOROGE**

**JUDGE**