

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT CHUKA

CHUKA ELC CASE NO. 250 OF 2017

FORMERLY MERU ELC. 97 OF 2013

MARY CIAMBAKA MWIANDI.....PLAINTIFF/APPLICANT

VERSUS

BENSON MUGENDI MBAKA.....DEFENDANT

JUDGMENT

1. This suit was to be heard on **13.2.2018**. Mr. **I.C. Mugo** for the plaintiff told the court that he was ready to proceed. His client, the plaintiff, was in court. **Mr. Murango Mwenda**, holding brief for **Otieno C**, told the court that the defendant's advocate was not ready to proceed as by the time he received the hearing notice, he had other matters in other courts. It is noted that the hearing notice was ordered to be issued by the court after the parties failed to come to court for hearing on **28.11.2017**. Indeed the court should have dismissed the suit then, but in the interest of justice gave the parties a chance for them to prosecute their case.

2. The suit was called on outside by the Court Assistant, Mr. Ndegwa. It was confirmed that the defendant had not come to court to participate in the hearing slated for today.

3. Order 12 of the Civil Procedure Rules, requires the presence of the litigants and not the presence of their advocates. The advocates can give cogent reasons for the absence of their clients. If the reasons are satisfactory, the court will invariably give the matter another date for hearing or directions. In this case, the defendant has missed two hearing dates with no satisfactory explanations. It does not matter that the matter is part heard. The defendant is not in court.

4. In the circumstances, I find it meritorious to dismiss this suit against the defendant.

5. The plaintiff is deemed to have proved his case, which the defendant has not controverted.

6. Judgment is entered for the plaintiff in the following terms:

a) An order is hereby issued directing the Land Registrar, The District Surveyor and the County Government of Tharaka Nithi to visit the suit land and beacon the common boundary between **PLOT NO. 19 NDAGANI TRADING CENTRE, CHUKA** and **LR: KARINGANI/NDAGANI/762**.

b) It is declared that **PLOT NO. 19 NDAGANI TRADING CENTRE, CHUKA** is not **LR: KARINGANI/NDAGANI/762** and the same belongs to the plaintiff.

c) Costs are awarded to the plaintiff.

Delivered in open court at Chuka this 13th day of February, 2018 in the presence of:

CA: Ndegwa

I.C. Mugo for the plaintiff

Murang'o Mwenda h/b Otieno C for the defendant

P.M. NJORGE

JUDGE