



**REPUBLIC OF KENYA**

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

**CHUKA ELC CASE NO. 70 OF 2017**

**FORMERLY MERU ELC. 66 OF 2015**

**M'KEA MUGWIKA.....PLAINTIFF**

**VERSUS**

**MIRUNGU MARIGI (Sued as the legal representative of the estate of the late**

**M'Marigi Mungania alias Marigi Mungania).....DEFENDANT**

**RULING**

1. This application is dated **12<sup>th</sup> February, 2018** and seeks the following orders:

1. That on the first instance this application be certified as urgent and the same be heard ex-parte.
2. That this honourable court be pleased to set aside and vary the dismissal order of the plaintiff's suit dated 7.2.2018 for non attendance on 25.1.2018 and any subsequent orders thereof upon such terms as are just for the interests of justice.
3. That this honourable court be pleased to set aside the said dismissal order of the plaintiff's case dated 7.2.2018 and order for reinstatement of the plaintiff's case for further hearing on its own merits.
4. That this honourable court be pleased to make such further orders as may be necessary for the interest of justice.
5. That the costs of this application be in the cause.

2. The application is supported by the affidavits of M'Kea Mugwika (the applicant) and Julius Kiogora Arithi (the applicant's advocate) and has the grounds:

- a. That the plaintiff had fully complied with the provisions of order 11 of the Civil Procedure Rules as ordered by the court and the court certified the case ready for hearing.
- b. That this suit is part heard the plaintiff having been in court (sic) testified on 7.11.2017.
- c. That the counsel for plaintiff honestly believed that the case was coming up for further hearing on 25.1.018 and not 24.1.2018.
- d. As a result of the mistake on the part of the parties and their advocates they were not in court on 24.1.2018 hence the dismissal of the plaintiff's suit.
- e. That the plaintiff's (sic) has all along been serious this being a sensitive land matter based on trust and he wishes the same to be concluded on merits.
- f. That the plaintiff is eager to prosecute his case and he believed that the case was coming up for further hearing on 25.1.2018 and he attended court on that day in the company of his advocate and his witnesses.
- g. That there is no inordinate delay in bringing this application.
- h. That the plaintiff's failure to attend court on 24.1.2018 was not deliberate and he prays to be excused under the circumstances of

this case.

i. That this honourable court has wide unfettered discretion to set aside and vary the dismissal order of 7.2.2018 and it is fair that the same be set aside *ex debito justitiae*.

j. That no prejudice will be occasioned to the defendant if the suit is reinstated for hearing on merits as the defendant and his advocate also believed that the hearing of the case was 25.1.2018 and not 24.1.2018.

k. That the mistake on the part of plaintiff's counsel ought not to be visited on his client the counsel having noted the hearing as 25.1.2018 by mistake instead of on 24.1.2018.

l. That it is tenable that the orders sought be granted as the court has the jurisdiction to grant the same.

3. The main reason for the parties not coming to court is that the applicant's advocate had diarized the matter as coming up on 25.1.2018 instead of on 24.1.2018.

4. The application is not opposed.

5. The applicant's explanation is accepted.

6. In the circumstances, the application is allowed.

7. As the orders sought in the plaint can be canvassed in the Chuka CM's Court, it is ordered that this suit be transferred to Chuka CM's Court for hearing and determination.

8. It is so ordered.

**Delivered in open court at Chuka this 21<sup>st</sup> day of March, 2018 in the presence of:**

**CA: Ndegwa,**

**Miss Wanjohi for the Plaintiff/Applicant**

**P.M. NJOROGI**

**JUDGE**