



**REPUBLIC OF KENYA**

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

**CHUKA ELC CASE NO. 229 OF 2017**

**FORMERLY EMBU CIVIL CASE NO. 92 OF 1997**

**PETER NDEKE MATE.....PLAINTIFF**

**VERSUS**

**ZAKARIA NKUNE & 8 OTHERS.....DEFENDANTS**

**RULING**

1. This court issued a Notice to show cause why this suit should not be dismissed for want of prosecution in terms of **order 17 rule 2(1)** of the **Civil Procedure Rules**. The notice was dated **21<sup>st</sup> February, 2018** and the parties were to show cause on **15<sup>th</sup> March, 2018**.

2. I do note that after the Notice was issued, the plaintiff's advocate, Messrs **Duncan Muyodi & Co**, on **15<sup>th</sup> March, 2018** filed the Plaintiff's List of Documents.

3. During the day when cause was to be shown, that is on **15<sup>th</sup> March, 2018**, **Miss Kithaka** holding brief for **Mr. Muyodi**, the plaintiff's advocate told the court that this matter had been transferred from Embu. She further told the court that the plaintiff required **45 days** to substitute some of the deceased defendants.

4. **Mr. I.C. Mugo**, holding brief for **Mr. Joe Kathungu**, the defendant's advocate, told the court that the suit was ripe for dismissal under **Order 17 of the Civil Procedure Rules** for want of the prosecution. He postulated that the plaintiff had not shown cause why the suit should not be dismissed. Cause having not been shown, he opined that the court should go ahead to dismiss the suit.

5. **Mr. Mugo** went on to submit that the plaintiff did not have to wait until he was moved by the court. He also pointed out that the plaintiff had not told the court which party had died and when.

6. I agree with **Mr. Mugo** that cause has not been shown as to why this suit should not be dismissed for non-prosecution in terms of the provisions of **Order 17 of the Civil Procedure Rules**. More so, as the court notes that this suit was first **filed in 1997, 21 years ago**.

7. In the circumstances, **this suit is dismissed**.

8. It is so ordered.

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

CA: Ndegwa

I.C. Mugo h/b Joe Kathungu for the defendants

Miss Wanjohi h/b Akwalu for the plaintiff

**P.M. NJOROGE**

**JUDGE**