



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT CHUKA

CHUKA ELC CASE NO. 154 OF 2017

FORMERLY MERU ELC. 88/2012 (OS)

ENID MWIMBI MUTUIRI.....PLAINTIFF

VERSUS

BEDFORD MICHENI MUTUIRI.....DEFENDANT

RULING

1. This court gave this suit a hearing date on **29th January, 2018**. In the presence of advocate M/S Kaaria, representing the Plaintiff/Applicant and advocate Ondari, representing the defendant, this court, by consent of the parties' respective advocates, directed that the suit be heard on **18th April, 2018**.

2. On **18th April, 2018**, Mr. Rimita, holding brief for Miss Kaaria, the Plaintiff's/Applicant's advocate, informed the court that Miss Kaaria had an urgent family issue she had gone to attend to and, therefore, sought that the apposite hearing be adjourned. Mr. Rimita told the court that Miss Kaaria had written a letter to the Deputy Registrar requesting that the matter be taken out of the cause list and that it be allocated another hearing date.

3. I do note that the apposite hearing date was given by this court on 29th January, 2018, about two and a half months ago. That the plaintiff's/ Applicant's advocate wrote her letter seeking adjournment of the apposite hearing on 16th April, 2018, only two days before the hearing was scheduled to take place does not satisfy this court that hearing of the suit should have been adjourned.

4. Order 12 of the Civil Procedure Rules Offers erudite guidance regarding how a court should proceed in such circumstances. I found it necessary to invoke its provisions and had the suit called on for hearing outside the court. The Plaintiff/Applicant was not in court.

5. It is pellucid that Order 12 of the Civil Procedure Rules requires the presence of the parties and not their advocates. When the parties are in court, the advocates may apply to court, for good reasons, that a hearing be adjourned to another date. Such good reasons may include sickness on the part of the litigant, bereavement or even sickness on the part of the advocate etc. The order, however, is unequivocal that the most important players are the litigants themselves and not their advocates. In this particular case I opine that by merely stating that she had an urgent family issue to attend to, the plaintiff's / Applicant's advocate did not show cause to the satisfaction of this court that an adjournment was merited. To exacerbate the situation, the Plaintiff/Applicant was not in court.

6. Mrs. Waigwa for the defendant told the court that the defendant was in court and that her side was ready for the hearing. She lamented that although the hearing date was fixed by the court almost 3 months ago, the plaintiff's advocate only gave notice that she would seek an adjournment only 2 days before the hearing date. She said that this amounted to waste of precious judicial time. She asked the court to invoke the provisions of order 12 of the Civil Procedure Rules and dismiss the suit.

7. I do note that this suit has remained unheard and undetermined for close to six years.

8. I reproduce here-below the provisions of Order 12 of the Civil Procedure Rules.

It states:

3(1) If on the day fixed for hearing, after the suit has been called on for hearing outside the court, only the defendant attends and he admits no part of the claim, the suit shall be dismissed except for good cause to be recorded by the court.

3(2) If the defendant admits any part of the claim, the court shall give judgment against the defendant upon such admission and shall dismiss the suit so far as it relates to the remainder except for good cause to be recorded by the court.

3(3) If the defendant has counterclaimed, he may prove his counterclaim so far as the burden of proof lies on him.

9. The court notes that the defendant has no counterclaim and has not admitted any part of the claim.

10. I invoke the provisions of Order 12 Rule 3(1) of the Civil Procedure Rules and as I have found no good cause to record as to why the suit should not be dismissed, I do hereby dismiss this suit.

11. Costs are awarded to the defendant.

12. It is so ordered.

Delivered in open court at Chuka this 19th day of April, 2018

in the presence of:

CA: Ndegwa

Enid Mwimbi Mutuiiri – plaintiff

Bedford Micheni Mutuiiri - defendant

P.M. NJORGE

JUDGE