



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT CHUKA

CHUKA ELC CASE NO. 143 OF 2017

FORMERLY MERU ELC CASE NO. 155 OF 2011 (OS)

CATHERINE CIEGOKI KITHAKA (as legal representative of

LUKE KITHURE MUTIGA).....PLAINTIFF

VERSUS

JONATHAN KITHAKA IGUNA & ANOTHER.....DEFENDANTS

RULING

1. This court dismissed the plaintiff's suit on **3rd May, 2018**. The defendants were directed to prove their counter-claim on **8th May, 2018**.
2. On **8th May, 2018**, Miss Munga informed the court that the defendants were not in court. She also indicated that she was not aware that the matter was coming up in court for the defendants to prove their counter-claim.
3. Mr. Murango Mwenda asked the court to dismiss the counter-claim because the defendants were not in court and, therefore, could not prove their claim.
4. Miss Munga countered that the wife of the 1st defendant was in court and had been substituted for her husband. Upon perusal of the court file, it is true that Catherine Ciegoki Kithaka was substituted as the 1st defendant in place of her deceased husband vide this court's ruling dated **15th July, 2017**.
5. Mr. Mwenda replied that one defendant could not prove a counter claim in the absence of the other defendant.
6. I have considered the pertinent issues. I do find that the defendants have not proved their counter-claim.
7. In the circumstances, the defendants' counter-claim is dismissed.
8. No costs concerning the counter-claim are awarded.
9. It is so ordered.

Delivered in open Court at Chuka this **15th day of May, 2018** in the presence of:

CA: Ndegwa

Kiongo h/b Murango Mwenda for Rimita

Rimita for the defendants – Absent

Catherine Ciegoki Kithaka – 1st Defendant

P. M. NJOROGE

JUDGE