



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT CHUKA

CHUKA ELC CASE NO. 265 OF 2017

FORMERLY MERU ELC. 79 OF 2014

NJAGI KANAMPIU

(SUING AS NEXT FRIEND JOSEPH KTHENYA KANAMPIU)....PLAINTIFF/APPLICANT

VERSUS

KELLEN NCHUNGUNI RIUNGU & 2 OTHERS.....DEFENDANTS

RULING

1. The ruling concerns a Notice of Preliminary Objection which is in the following form:

NOTICE OF PRELIMINARY OBJECTION

TAKE NOTICE that the Defendants shall at the hearing suit filed by plaintiff dated **02.06.2011** raise a preliminary objection and seek to have the same struck out with costs on the grounds:-

1. That the suit offends the mandatory provisions of section 26 and 27 of the Mental Health Act (Cap 248 of the Laws of Kenya) and as such, the same is a non-starter, incurably bad in law and an abuse of court process.
2. That the suit is scandalous, frivolous or vexatious.
3. That the suit is incompetent as the plaintiff lacks the necessary locus standi to institute this suit and is therefore incapable of sustaining the same against the defendant.

Dated at Nyeri this 23rd day of April, 2018

MUCHIRI WA GATHONI & COMPANY

ADVOCATES FOR DEFENDANTS

2. Off hand, it is clear that the preliminary Objection raises issues which can only be canvassed through oral evidence. It is, therefore, not predicated upon a pure point of law.

3. In the circumstances, the Preliminary Objection dated **23rd April, 2018** is hereby dismissed.

4. No costs are awarded.

5. The court orders that the suit be heard on **19th June, 2018**.

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

CA: Ndegwa

Majau for 1st, 2nd and 3rd Defendants

Njagi Kanampiu – Plaintiff

Joseph Katherya Kanampiu – Intended 4th Defendant

P. M. NJORGE

JUDGE