



**REPUBLIC OF KENYA**

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

**CHUKA ELC CASE NO. 210 OF 2017**

**FORMERLY MERU ELC. 246 OF 2016**

**M'CHABARI KINORO.....PLAINTIFF**

**VERSUS**

**ISAIAH NKOROI MURIUNGI.....1<sup>ST</sup> DEFENDANT**

**JEREMIAH NYAGA MURIUNGI.....2<sup>ND</sup> DEFENDANT**

**JACOB GITONGA MURIUNGI.....3<sup>RD</sup> DEFENDANT**

**ELIVASE MUTEGI KAJIETA.....4<sup>TH</sup> DEFENDANT**

**THE DISTRICT LAND REGISTRAR THARAKA SOUTH.....5<sup>TH</sup> DEFENDANT**

**THE HONOURABLE ATTORNEY GENERAL.....6<sup>TH</sup> DEFENDANT**

**RULING**

1. On **19.6.2017**, when the court was poised to hear the defendants' application dated **31<sup>st</sup> July, 2018**, Mr. Murango Mwenda, for the plaintiff, urged the court to strike out and expunge from the court record the Replying Affidavit filed on **18.6.2018** because it was filed against the express provision of order 51 Rule 14(2) of the Civil Procedure Rules which requires filings to be done three clear days before the date of hearing.

2. Mr. Guantai for the plaintiff riposted that this was a procedural technicality. He admitted that he had filed the apposite replying affidavit on 18<sup>th</sup> June, 2018 only one day before the intended hearing. He also reminded Mr. Mwenda that he had he himself served him documents in court and said that he had not opposed that service.

3. The rationale for Order 51 Rule 14 (2) is to afford parties enough time to respond to assertions proffered by apposite parties. I deem this infraction a procedural technicality that can easily be cured by invocation of Article 159(d) of the Constitution and Section 3A of the Civil Procedure Act.

4. The apposite oral application is denied and the impugned Replying Affidavit is deemed to have been properly filed.

5. It is so ordered.

Ruling delivered in open court at Chuka this **19<sup>th</sup> day of June, 2018** in the presence of:

CA: Ndegwa

Guantai for the plaintiff

Murango Mwenda for the defendants

**P.M. NJOROGE**

JUDGE