



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT CHUKA

CHUKKA ELC CASE NO. 93 OF 2017

FORMERLY MERU ELC CAE NO. 11 OF 2006

RUKENYA BUURI.....PLAINTIFF

VERSUS

M'ARIMI MINYORA.....1ST DEFENDANT

DERICK KIRUJA.....2ND DEFENDANT

MUGENDI M'ARIMI.....3RD DEFENDANT

RULING

1. This application is dated **13th June, 2018**. It states that it is premised upon Order 12 Rule 7, Order 9 Rules 9 and 10, Order 51 Rule 1 of the Civil Procedure Rules and Sections 3A and 3A of the Civil Procedure Act.

2. The application seeks the following orders:

1. That this application be certified urgent.

2. That the firm of Basilio Gitonga, Muriithi & Associates Advocates be granted leave to act for the plaintiff in place of the firm of Gatari Ringera & Co. Advocates.

3. That an order of stay of execution of the judgment delivered on 14.02.2018 do issue in as far as it relates to L.R. NO. MWIMBI/S. MUGUMANGO/305 pending the interpartes hearing of this application.

4. That an order of stay of execution of the judgment delivered on 14.02.2018 do issue in as far as it relates to L.R. NO. MWIMBI/S. MUGUMANGO/305 pending the hearing and determination of this application.

5. That the honourable court do set aside the order dismissing the plaintiff's suit and the judgment entered in favour of the defendants and do set the suit down for hearing.

6. That the costs of this application be provided for.

3. The application is supported by the affidavit of RUKENYA BUURI, the plaintiff sworn on 13th June, 2018 and has the following grounds:

1. That this suit was heard on 18.12.2017 and a judgment delivered on 14.02.2018.

2. That the plaintiff was not informed that the suit had been scheduled for hearing on the said 18.12.2017.

3. That the failure of the plaintiff to attend court was purely and squarely occasioned by the refusal by his previous counsel to notify him that the suit was scheduled for hearing on that date.

4. That the plaintiff has all along been eager to have the matter heard and determined.

5. That the plaintiff stands to suffer immensely if the judgment obtained by the defendants is implemented.
 6. That the mistake or oversight of counsel should not be visited upon a diligent litigant.
 7. That judgment having been entered, it is a mandatory requirement of law that the court must authorize any intended change of advocate.
 8. That the plaintiff has a very strong case against the defendants and a very strong defence against their claim.
 9. That the relief sought herein is for purposes of advancing the course of justice and fairness.
4. At the ex-parte stage Mr. Mark Muriithi asked the court to grant prayers 2 and 3.
 5. I find that I cannot grant prayer 3 at this stage, as being a prayer for stay of execution there is need for the matter to be heard interpartes.
 6. Prayer 2 is granted as a consequence of which the firm of Basilio Gitonga, Muriithi & Associates, Advocates is hereby granted leave to act for the plaintiff in place of the firm of Gatari Ringera & Co, Advocates.
 7. The plaintiff's advocate is directed to serve the application properly upon the defendants.
 8. This court directs that this application be heard interpartes on **21st June, 2018**.
 9. It is so ordered.

Delivered in open court at Chuka this **14th day of June, 2018** in the presence of:

CA: Ndegwa

Mark Muriithi for the Plaintiff/Applicant

P. M. NJOROGÉ

JUDGE