



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT CHUKA

CHUKA ELC CASE NO. 208 OF 2017

FORMERLY MERU ELC NO. 169 OF 2013

**LUCY KARAUKI KIRAMBIA (suing as the legal representative of the estate of
PETER MURIUNGI KAUNGA (deceased).....PLAINTIFF**

VERSUS

MUTHENGI M'MWATHI MUTHIGU & 3 OTHERS.....DEFENDANTS

RULING

1. This application is dated **18th May, 2018** and seeks orders:

1. That the honourable court be pleased to order re-opening of the proceedings herein to enable the 1st defendant cross examine the plaintiff on her evidence and tender his defence.
2. That the honourable court be pleased to issue such other order as may meet the ends of justice.
3. That the costs of this application be costs in the suit.

2. The application has the following grounds:

- i. This matter proceeded ex-parte on **8th May, 2018** and the plaintiff closed her case and the court ordered for tendering of submissions.
- ii. That when the counsel for the 1st defendant was served with the hearing notice the same was received under protest.
- iii. That unless the suit is opened and the 1st defendant allowed to testify he stands to suffer imparabile (sic).
- iv. The 1st defendant has a very good defence to the plaintiff's claim.
- v. The reliefs sought in the plaint are drastic.
- vi. The 1st defendant's counsel could not attend court because of reasons beyond his control.
- vii. The 1st defendant is ready and willing to abide by any such orders the court may make.

3. The application is supported by the affidavit of Charles Mokuu, the defendant's advocate sworn on **8th May, 2018** which states:

I, CHARLES MOKUA a male adult of sound mind of C/O P. O. Box 2846, Meru do make oath and state as follows:

1. That I am an advocate of the High Court of Kenya in conduct of this matter on behalf of the defendant therefore competent to make and swear this affidavit.
2. That the plaintiff filed this suit way back in 2013 in the ELC Court at Meru as E & L 169/2013.

3. That for inexplicable reasons this matter stalled at the Meru Courts and all along we were under understanding that this matter was still in Meru Law Courts until the **6.11.2017** when we were served with a mention notice for **15.11.2017**.

4. That we were not any time served with any notice from the court intimating that this matter had been transferred to Chuka.

5. That the mention notice dated **6.11.2017** for **15.11.2017** was received under protest. (annexed is a copy marked cm 1).

6. That on **16.11.2017** we were served with a hearing notice for the **31.01.2018**.

7. That upon receipt of the hearing notice we made every effort to contact the 1st defendant to no avail. The contact phone left with us was not going through. As it were then we did not have instructions considering that we were last in touch with the 1st defendant sometime in 2016.

8. That on **11.4.2018** (sic) were served with a hearing notice for **8.5.2018**. We tried to raise the 1st defendant through the contacts left with (sic) but were not successful. We nevertheless received the notice but on protest considering that the date was not convenient (here annexed and marked CMO 1 is a copy of the hearing notice and photocopy of our diary's engagements for the day).

9. That I have further noted that the plaintiff has not been involving us in the conduct of this matter especially after noting that there is an amended plaint on record. We were not served with an application for leave to amend pleadings.

10. That the 1st defendant after the **8th May, 2018** made contacts with us especially after hearing from his neighbour hood (sic) that the court has awarded the plaintiff land.

11. That in the company of the 1st defendant I visited the law courts on **14.5.2018** and upon perusal of the court file I noted that (sic) matter had proceeded and closed for submissions on **22.5.2018**.

12. That for the interest of justice we pray that the 1st defendant be accorded the chance to give his part of stay (sic).

13. That all that is deponed to herein above is the truth.

4. During interpartes hearing, Mr. Mokuia for the applicants owned up that he was aware of the apposite hearing date but could not reach the defendants as he had lost touch with them and he had last seen them in the **year 2016**. He pleaded with the court to give the defendants a last chance.

5. Mr. Mwanzia for the plaintiff's was of the view that this application ought to be dismissed as the applicants' advocate had admitted that the hearing date was within his knowledge. He, however, left the matter to the discretion of the court.

6. In the interest of justice, and very reluctantly, I will allow this application subject to the defendants paying a sum of **Kshs.15,000/=** as costs to the plaintiff before the next date this court will fix for hearing FAILING which payment of costs, this application will stand dismissed.

7. It is so ordered.

Delivered in open court at Chuka this 18th day of June, 2018 in the presence of:

CA: Ndegwa

Mwanzia for the Plaintiff

Mokuia for the Defendants

P. M. NJOROGE

JUDGE