



**REPUBLIC OF KENYA**

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

**CHUKA ELC CIVIL APPEAL CASE NO. 130 OF 2017**

**FORMERLY MERU ELC CIVIL APPEAL CASE NO. 14 OF 2017**

**NGACARA IGOJI.....APPELLANT**

**VERSUS**

**JOHN KIMANI MWENDWA.....RESPONDENT**

**RULING**

1. This application is dated **30<sup>th</sup> March, 2018** and states that it has been brought to court under section 1A, 1B, 3, 3A, 63 (e) 7 80 of the Civil Procedure Act Cap 21 Laws of Kenya, section 101 of the Land Registration Act No. 3 of 2012, order Rule 9 (a), Order 43 Rule 1, Order 45 Rule 1 & 2, Order 51 Rules 1 & 3 of the Civil Procedure Rules, Articles 159 of the Constitution, and all other enabling provisions of the law.

2. The application seeks the following orders.

1. That this application be certified urgent and be heard ex-parte in the first instance.
2. That leave be granted for firm of Okubasu & Munene Co. Advocates to be allowed to come on record for the applicants after ruling in place of Wambugu & Muriuki Co. Advocates pending hearing and determination of this application.
3. That the honourable court be pleased to reinstate this suit and the application dated 10<sup>th</sup> September, 2014 for hearing and determination.
4. That this honourable court be pleased to order for stay of execution of the Ruling dated 14<sup>th</sup> day of March, 2018 and delivered by Justice Njoroge pending the hearing and determination of this application interpartes.
5. That this honourable court be pleased to set aside the Ruling dated 14<sup>th</sup> day of March, 2018 and the consequential orders pending the hearing and determination of this application interpartes.
6. That the honourable court be pleased to grant any other order or better relief as shall meet the ends of justice.
7. That cost of this application be provided for.

3. The application has the following grounds:

- a. That the respondent had filed the application dated 2<sup>nd</sup> January, 2018 seeking the dismissal of the applicant's application dated 10<sup>th</sup> September, 2014.
- b. That both the applicant and the respondent attended court before justice Makau, Gikonyo, Mabeya and finally Njoroge where the final determination was made.
- c. That this honourable court noted that the matter was before the other judges as listed above though they were not entitled to hear a matter falling under the province of the Environment and Land Court.
- d. That this is clear manifestation that the matter was active and had not suffered want of prosecution since it was live in court and attended to by different judges.

e. That the respondent should have moved court at that material time to have the matter dismissed and not use under hand tactics to the detriments of the applicant herein.

f. That the matter was transferred to the appropriate court not at the instigation of the respondent but on the court's own motion and thus the respondent cannot raise the issue of non-prosecution since the respondent participated in all the proceedings before the aforementioned judges.

g. That this is a clear demonstration that the matter had not suffered want of prosecution and as such the same should be reinstated and be heard on merit.

h. That the honourable court should have given the parties benefit of doubt to ventilate on the application on merit since nor the applicant or the respondent herein had made the matter to be heard by the wrong court.

i. That the applicant is willing to ventilate and prosecute his application dated 10<sup>th</sup> September, 2014 since the same has got high chances of success.

j. That the applicant shall suffer substantial loss and damage if reinstatement, stay and setting aside of the ruling dated 14<sup>th</sup> March, 2018 is not granted.

k. That it is only fair and in the interest of justice that this application be allowed as prayed.

4. Mr. Muchomba h/b Mr. Munene for the applicant asked the court to give directions as the parties had filed their submissions. Mr. Mugo asked the court to dismiss the application summarily because in its ruling dated 14<sup>th</sup> March, 2018, it had made definitive findings.

5. I have carefully considered the pleadings, the submissions and the authorities the parties have submitted in support of their respective submissions.

6. Having perused this court's ruling delivered on 14<sup>th</sup> March, 2018, I opine that I had in that ruling made definitive findings. I am unable to sit as an appellate court in an application concerning matters upon which I had made findings. I am persuaded by the respondent's submissions that this application should be dismissed.

7. I find that this application lacks merit and ought to be dismissed summarily.

8. In the circumstances, this application is dismissed. I reiterate that the apposite suit remains dismissed in accordance with the dismissal order issued by the court on **20<sup>th</sup> August, 2010**, eight years ago.

9. Costs are awarded to the respondent.

10. It is so ordered.

**Delivered in open Court at Chuka this 24<sup>th</sup> day of July, 2018 in the presence of:**

CA: Ndegwa

Muchomba h/b Munene for the Applicant

I.C. Mugo for the Respondent

**P.M. NJOROGE**

**JUDGE**