



**REPUBLIC OF KENYA**

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

**CHUKA ELC CASE NO 169 OF 2017**

**FORMERLY MERU ELC CASE NO.176 OF 2012**

**HENRY KIOJI NDAITHU.....PLAINTIFF**

**VERSUS**

**MAKEMBO MAGANE.....1<sup>ST</sup> DEFENDANT**

**MUGAO M'MUCHEGE.....2<sup>ND</sup> DEFENDANT**

**RULING**

1. This matter was coming for directions on **25<sup>th</sup> September, 2018**. This date was fixed at the instance of Miss Kiome, the plaintiff's advocate. However on **25<sup>th</sup> September, 2018**, the plaintiff's advocate did not come to court. The plaintiff was also not in court.
2. Upon perusal of the apposite file, it is pellucid that the parties in this matter have not been interested in having the suit heard and determined expeditiously. This suit was filed in 2012.
3. I note that at one time, per incurium, the plaintiff had obtained an interlocutory Judgment. To put matters into perspective, I reproduce herebelow my ruling dated **14<sup>th</sup> day of November, 2017** concerning this matter.

**RULING**

1. Mr. Ondari informed me this morning that the plaintiff had passed on. Mr. Mwititi needs time to have him substituted.
2. I do note that on 26.5.2016, the court fixed 25.8.2016 as the date for formal proof proceedings. However, the next time the plaintiff's advocate was in court was on 27.7.2017, over one year later.
3. I have perused the plaint. The plaintiff's plaint dated 23<sup>rd</sup> November, 2012 has only a prayer for permanent injunction. It contains no pecuniary claim. The interlocutory judgment entered by the Deputy Registrar, dated 13.5.2013, is therefore wrongly entered. It is therefore dismissed and expunged from the court records.
4. The plaintiff's advocate is granted 45 days to substitute the deceased plaintiff.
5. The plaintiff's advocate is directed to properly serve upon the defendants with the next date for directions.
6. Parties will take directions on 29.1.2018.
7. It is so ordered.

**Delivered in open court at Chuka this 14<sup>th</sup> day of November, 2017** in the presence of:

CA: Ndegwa

Ondari h/b Mwititi for the Plaintiff

**P.M. NJOROGE**

**JUDGE**

4. Justice delayed is justice denied. On 30<sup>th</sup> April, 2018, Miss Kiome, the plaintiff's advocate, asked for 3 months to sort out issues concerning her prosecution of this matter. This court granted that request. She also asked the court to give directions on **25<sup>th</sup> September, 2018**.

5. Miss Kiome, the plaintiff's advocate, has confirmed that she cannot trace her client.

6. This court cannot close its eyes when its orders are disregarded by advocates and their clients. The overriding objective of the Civil Procedure Act and of the Environment and Land Court Act is to facilitate the just, expeditious, proportionate and affordable resolution of disputes. This court has inherent power to ensure that the overriding objective is achieved. Article 159(2) of the Constitution of Kenya is pellucid that: "Justice shall not be delayed". The ELC Practice Directions empower the court to give orders as the end of justice may require.

7. Having taken the totality of all circumstances surrounding the manner in which the prosecution of this case by the parties has been handled, I find that this suit merits dismissal.

8. In the circumstances, this suit is hereby dismissed.

9. I issue no order as to costs.

10. It is so ordered.

**Delivered in open court at Chuka this 26<sup>th</sup> day of September, 2018** in the presence of:

CA: Ndegwa

Parties absent

**P.M. NJORGE**

**JUDGE**