



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT CHUKA**

**CHUKA ELC CASE NO 57 OF 2017**

**FORMERLY MERU ELC CASE NO.220 OF 2016**

**KOOME SAMUEL MWIRARIA.....PLAINTIFF**

**VERSUS**

**NICKSON MUGAMBI RUCHE.....DEFENDANT**

**RULING**

1. This ruling concerns an application filed by the plaintiff seeking orders:

1. That this honourable court be pleased to strike out the defendant's defence dated 4<sup>th</sup> January, 2017.
2. That costs of this application be provided for.

2. The application is supported by the affidavit of KOOME SAMUEL MWIRARIA, the plaintiff and has the following grounds:

- a. That the defendant on 30<sup>th</sup> November, 2016 received copies of Certificate of Urgency, Notice of Motion, Supporting Affidavit, Plaint and Summons to Enter Appearance all dated 9<sup>th</sup> November, 2016.
- b. That the defendant on 13<sup>th</sup> December, 2016 filed his Memorandum of Appearance and indeed did appear in court on the said 13<sup>th</sup> December, 2016.
- c. That the defendant filed his statement of defence on 4<sup>th</sup> January, 2017 but failed, neglected and/or ignored the service of the plaintiff's counsel with the said documents.
- d. That the mandatory provisions of Order 7 Rule 1 of the Civil Procedure Rules demand that defendant (sic) shall file and serve a defence within 14 days after he has entered appearance and an affidavit of service, proving such service of the defence upon the plaintiff, is required.
- e. That the defendant only served their (sic) defence upon plaintiff's counsel on 28<sup>th</sup> February, 2017, almost three months after entering appearance and two months after filing the same, and the said defence was received under protest.
- f. That the defence served upon the plaintiff does not comply with the mandatory provisions of

Order 7 Rule 5 of the Civil Procedure Rule as it is not accompanied by a list of witnesses to be called at trial, nor is it accompanied by written statements signed by the witnesses nor copies of documents to be relied on at trial.

g. That all the aforementioned actions by the defendants (sic) clearly indicate that either he does not seriously wish to defend his suit or is intent on delaying the prosecution of this suit.

h. That if permitted the defendant will seriously prejudice the speedy prosecution of this suit and defeat the ends of justice to the detriment of the plaintiff.

3. On 13.3.2017, Mr Frank Gitonga, the plaintiff's advocate told the court that the application was served upon the defendant on 2.3.2017. He told the court that the defence counsel had more than 10 days to file his response. He urged the court to allow the application.

4. Miss Baikiata, holding brief for D.J. Mbaya, for the defendant, told the court that the defendant was not cooperative and this explains why he had not filed the apposite response. He told the court that Mr. Mbaya sought 30 days to file his response.

5. I have considered the issues raised in the application and the submissions proffered by the parties.

6. I find that the plaintiff's application merits being allowed.

7. This application is allowed.

8. Costs are awarded to the plaintiff.

9. It is so ordered.

**Delivered in open court at Chuka this 23<sup>rd</sup> day of March, 2017 in the presence of:**

**CA: Ndegwa**

**Frank Gitonga for plaintiff/Applicant**

**P.M. NJOROGE**

**JUDGE**