



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT CHUKA**  
**CHUKA ELC CASE NO 21 OF 2017**  
**FORMERLY MERU ELC CASE NO.44 OF 2016**  
**PETER MUGO.....1<sup>ST</sup> PLAINTIFF**  
**CATHERINE IGOKI MUGO.....2<sup>ND</sup> PLAINTIFF**  
**VERSUS**  
**STEPHEN NJAGI..... DEFENDANT**  
**RULING**

1. The Notice of Preliminary Objection dated 12<sup>th</sup> July, 2016 has the following grounds:

1. The suit has been instituted without a valid consent of the Land Adjudication and Settlement Officer contrary to section 30 (1) of the Land Adjudication Act (Cap. 284) as read with section 8 (1) of the Land Consolidation Act (Cap 283) Laws of Kenya.
2. The suit was initially in a court that lacked jurisdiction in light of the provisions of Article 165 (5) (b) of the constitution and its transfer thereafter is inconsequential.
3. The parties have filed written submissions.
4. I have considered the submissions proffered by the parties and the authorities cited in this matter.
5. I find that whether a letter of consent addressed to a Chief Magistrate can suffice as a basis for instigation of a suit in a superior court is not a pure point of law. It invites arguments and raises an issue that can only be settled after taking the evidence of the parties.
6. Whether or not a suit initially instituted in the lower court can again be instituted in a superior court is not a pure point of law. The issue can only be determined after evidence is adduced by the parties.
7. As I am writing this short ruling, magistrate's courts are hearing Environment and Land Matters. The issue of Jurisdiction as regards ELC matters, at this time, cannot be said to be a pure point of law.
8. In the circumstances, the Preliminary Objection filed by the defendant dated 12<sup>th</sup> July, 2016 is hereby dismissed.

9. Costs shall be in the cause.

10. Parties to come to court for pre-trial conferencing and for directions on 17<sup>th</sup> July, 2017.

11. It is so ordered.

**Delivered in open court at Chuka this 12<sup>th</sup> day of April, 2017 in the presence of:**

**CA: Ndegwa**

**Dennis Kithinji h/b Mutunga for the Plaintiff**

**Mark Muriithi present for the Defendant**

**P.M. NJOROGI**

**JUDGE**