



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT CHUKA

CHUKA ELC CASE NO 216 OF 2017

GATURA MARIGU GACWE.....PLAINTIFF

VERSUS

SIMON MWIKAMBA EKURURA.....1ST DEFENDANT

THE DISTRICT LAND REGISTRAR THARAKA NITHI DISTRICT.....2ND DEFENDANT

THE ATTORNEY GENERAL.....3RD DEFENDANT

RULING

1. The 1st Defendant's Notice of Preliminary Objection reads as follows:

BE YEE AFORE-NOTIFIED. Prior to the hearing herein, the 1st defendant shall argue the unfolding points of law to have this case dismissed with proper costs to him. That is to say:-

1. By dint of ***Section 6 of the Civil Procedure Act, Cap. 21, Laws of Kenya***, this suit is sub-judice **CHUKA E.L.C. CASE NO. 6 OF 2017** (formerly **MERU E.L.C. CASE NO. 34 OF 2015**) which is pending between the plaintiff herein (as the only defendant therein) and the 1st defendant herein (as the sole plaintiff therein) over the same **L.R. NO. THARAKA/NKONDI "A"/1196**.

2. The plaintiff herein ought to have pleaded a counter-claim in the afore-said **CHUKA E.L.C. CASE NO. 6 OF 2017** instead of filing a fresh suit, by virtue of ***Order 7 Rules 3, 7 and 8 of the Civil Procedure Rules, 2010***.

3. The mandatory **30 days statutory notice** under ***Sections 13 and 13A of the Government Proceedings Act, Cap. 40 Laws of Kenya***, was not issued prior to the institution of this case.

2. The Preliminary Objection was canvassed on 21st June, 2017.

3. I find that the 3 grounds proffered in the Preliminary Objection invite arguments thus rendering them not pure points of law.

4. In the circumstances, I dismiss the Preliminary Objection.

5. Costs shall be in the cause.

6. I order that **Chuka ELC. 216 OF 2017** and **Chuka ELC.6 of 2017** be consolidated with **Chuka ELC.**

6 of 2017 becoming the main file and **Chuka ELC No. 216 of 2017** to be deemed as a counterclaim.

7. The plaintiff in **Chuka ELC 6 of 2017** should fully comply with **Order 11, Civil Procedure Rules** within the next **30 days** and all the other parties in the consolidated suit should fully comply with **Order 11 Civil Procedure Rules** within **30days** after receipt of the compliance documents filed by the plaintiff in **Chuka ELC. 6 of 2017**.

8. Hearing of the suit on 19th September, 2017

9. It is so ordered.

Delivered in open court at Chuka this **21st day of June, 2017** in the presence of:

CA: Ndegwa

Kiautha Arithi for the plaintiff in ELC 216 of 2017

Miss Kungu or 2nd and 3rd defendants in ELC 216 of 2017

Mrs Mwanzia for the plaintiff in ELC 6 OF 2017

P. M. NJOROGE

JUDGE