



**REPUBLIC OF KENYA**

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

**CHUKA ELC CASE NO 14 OF 2017 (OS)**

**FORMERLY MERU ELC CASE NO.18 OF 2016 (OS)**

**IN THE MATTER OF THE LAND REGISTRATION ACT NO. 6 OF 2012**

**AND**

**IN THE MATTER OF LAND ACT NO. 3 OF 2012**

**AND**

**IN THE MATTER OF THE LIMITATION OF ACTION ACT CAP 22**

**LAWS OF KENYA SECTION 7 AND 38 AND**

**IN THE MATTER OF AN APPLICATION BY NJOKA KATHUNI, ROSE KAGENDO**

**AND AILEEN MARUTA THAT THEY BE DECLARED THE PROPRIETORS OF  
LAND PARCELS MAGUMONI/MWONGE/1909, MAGUMONI/MWONGE/1910 AND  
MAGUMONI/MWONGE/1911 BY VIRTUAL OF OPERATION OF LAW (ADVERSE  
POSSESSION)**

**AND IN THE MATTER OF ORDER 37 RULE 7(1, 2, 3)**

**AND IN THE MATTER OF AN APPLICATION BY NJOKA KATHUNI, ROSE KEGENDO  
AND**

**AILEEN MARUTA THAT THEY BE REGISTERED AS PROPRIETORS OF LAND PARCELS  
MAGUMONI/MWONGE/1909, MAGUMONI/MWONGE/1910 AND LR.  
MAGUMONI/MWONGE/1911**

**BETWEEN**

**NJOKA KATHUNI.....1<sup>ST</sup> APPLICANT**

**ROSE KAGENDO .....2<sup>ND</sup> APPLICANT**

**AILEEN MARUTA.....3<sup>RD</sup> APPLICANT**

**VERSUS**

**мбака Катуни.....1<sup>ST</sup> RESPONDENT**

**JUSTINE M. MUTINDWA.....2<sup>ND</sup> RESPONDENT**

**CASTY KANYUA JOSEPH.....3<sup>RD</sup> RESPONDENT**

**RULING**

1. This application is dated 5<sup>th</sup> July, 2017 and seeks orders:

1. That the court be pleased to set aside and or vacate the dismissal order of 6<sup>th</sup> March dismissing the entire suit and the court be pleased to reinstate the suit for hearing.

2. Cost of the application be provided for.

2. The application is buttressed by the affidavit of NJOKAKATHUNI and has the following grounds:-

(a) That the instant suit was filed in court on 12<sup>th</sup> April, 2016.

(b) That the suit was dismissed under order 17 rule 2 (1) of Civil Procedure rules in that cause was not shown as to why the suit should not be dismissed for want of prosecution.

(c) That the suit had not finished a year yet as of 6<sup>th</sup> March 2017 and the requirements of order 17 rule 2 (1) of the C.P.R is that notice should issue after expiry of one calendar year.

(d) That on the day the suit was dismissed neither counsel for the applicant nor the applicants were aware of the date the notice having not been served upon counsel for the applicant nor the applicant himself.

(e) That if counsel for the applicant was served then he would have through his clerks received, signed and stamped the copy to be filed in court.

(f) That upon perusal of copy of notice on record it is neither received, signed nor stamped from the office of M/S IC.MUGO & CO ADVOCATES counsel for the applicants.

(g) That on 6<sup>th</sup> March 2017 counsel for the applicant was engaged in HIGH COURT SUCCESSION CAUSE NO. 224 OF 2015, S.P.M CR CASE NO.1009 of 2016 S.P.M CR CASE NO.930 OF 2015, S.P.M CR CASE NO.690 of 2015 and S.P.M CR CASE NO.946 OF 2015.

(h) That the delaying (sic) prosecuting the matter was occasioned by the 2<sup>nd</sup> respondent not being found for service and for all this time counsel for the applicant through a court process server was trying to find out his whereabouts for service.

(i) That counsel for the applicant realized that the suit had been dismissed for want of prosecution on 24<sup>th</sup> May as he was coming to court to file an application for substituted service.

(j) That the applicants stand to suffer irreparable loss if this suit is not reinstated in that they will be rendered landless and destitute at the hands of their brothers the respondents.

(k) That it will be in the interest of justice and fairness that the orders to reinstate the suit be granted by the court.

3. On 31<sup>st</sup> July, 2017 Mr. I. C. Mugo for the Plaintiffs/Applicants brought to the attention of the court that this suit was filed on 12<sup>th</sup> April, 2016 and by the time it was dismissed on 6<sup>th</sup> March, 2017 one year had not elapsed and, therefore, the threshold for the dismissal of the suit had not been achieved.
4. I agree. I declare that the apposite dismissal had been issued per incurium, inadvertently and irregularly.
5. In the circumstances, the dismissal is vacated and it is declared that the suit remains extant.
6. The plaintiffs are ordered to fully comply with order 11, CPR, within 30 days of today and the defendants are to fully comply with order 11, CPR, within 30 days after the receipt of the plaintiffs' compliance documents.
7. Parties to come to court for directions on 11.10.2017.
8. The plaintiffs are ordered to properly serve orders issued by the court today vide this ruling to the defendants within 14 days of today.
9. It is so ordered.

Delivered in open court at Chuka this **31<sup>st</sup> day of July, 2017** in the presence of:

CA: Ndegwa

I.C. Mugo for the plaintiffs

Defendants absent

**P. M. NJOROGE**

**JUDGE**