



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT CHUKA

CHUKA ELC CASE NO 107 OF 2017

FORMERLY MERU ELC CASE NO. 83 OF 2007

SILVERIA MURIA NKONGE.....PLAINTIFF

VERSUS

SIMON MUREITHI ALIAS SIMON ISHMAEL.....1ST DEFENDANT

ELIKANA MUTEMBEI.....2ND DEFENDANT

EDWARD MUGO M'MBAUNI.....3RD DEFENDANT

JULIUS G. MWEBIA.....4TH DEFENDANT

RULING

1. This application is dated **6th April, 2017** and seeks orders:

1. That this honourable court be pleased to dismiss this suit for want of prosecution.
2. That cost of this application and entire suit be borne by the plaintiff.

2. The application is supported by the affidavit of **Edward Mugo M'Mbuani** sworn on **6.4.2017** and has the following grounds:

- a) That the plaintiff has not taken only steps to set down this matter for hearing for over four (4) years.
- b) That the plaintiff has lost interest in this matter.
- c) That it is in the interest of justice that the application herein be allowed.

3. The application was heard interpartes on **26.7.2017**. **Mr. Mark Muriithi** supported dismissal of the suit by virtue of the claimed fact that no step had been taken for over one year before this application was filed. He laid reliance on the face of the application and on what was deponed in the apposite affidavit.

4. Mr Nyamu opposed the application and said that the parties were in court on **23.6.2016** but the matter could not proceed as the **3rd and 4th** defendants were not in court. He opined that between **23.6.2016** and **7.4.2017**, when this application was filed one year had not elapsed. He submitted that the dismissal threshold as decreed by order 17 of the Civil Procedure Rules had not been achieved.

5. The 1st and 2nd defendants opposed dismissal of the suit.

6. Having considered the totality of the issues raised herein and the feelings of the 1st and 2nd defendants that the suit should not be dismissed, I find that the plaintiff and the 1st and 2nd defendants have shown to the satisfaction of the court that this suit should NOT be dismissed.

7. This suit is not dismissed.

8. Costs shall be in the cause.

9. It is ordered that all parties, if they have not complied, should fully comply with order 11, Civil Procedure Rules within 60 days of today.

10. Parties will take directions on **6.11.2017**

11. It is so ordered.

Delivered in open court at Chuka this **26th day of July, 2017** in the presence of:

CA: Ndegwa

Nyamu Nyaga for the plaintiff

Muriithi h/b Gacomo for 3rd and 4th defendants, 1st and 2nd defendants

P.M. NJOROGE

JUDGE