



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 RUCHA..... DEFENDANT

RULING

1. This application is dated 24th April, 2017 and seeks orders:

1. THAT this application be certified as urgent and the same be heard exparte in the first instance.
2. THAT this Honourable court be pleased to review, vary, set aside the orders of **23rd March, 2017** striking out Defendant's/applicant's defence dated **4th January, 2017**.
3. THAT the Defendant's/applicant's defence dated **4th January, 2017** be reinstated to form part of the record.

IN THE ALTERNATIVE

4. THAT this Honourable court be pleased to grant the applicant leave to file a defence out of time.
5. THAT costs of this suit be provided for.

2. The application is supported by the affidavit of DAVID JOHN MBAYA sworn on 24th April, 2017 and has the following grounds:

- a) THAT this honourable court struck out the defendants defence dated 4.1.2017 on the 23rd March when this matter was coming up for ruling.
- b) THAT the plaintiff applied to have the said defence struck out.
- c) That the plaintiff did not show what prejudice he would suffer if his application dated 28th February, 2017 is declined.
- d) That having the said defence on record will not prejudice the plaintiff's case but it will help reach justice to all parties.

e) THAT the Defendant/Applicant is keen on prosecuting the said matter.

f) THAT if this application is not allowed the Applicant stands to suffer tremendous loss and damage.

g) THAT it is only just, fair and equitable that this application be allowed.

3. On **20.6.2017**, the applicant was granted 14 days to further respond and to file written submissions. This was done at the request of advocate Murango Mwenda who was holding brief for advocate D.J. Mbaya, the defendant's advocate.

4. Parties were ordered to take directions on 10.7.2017 and when a date for the court's ruling would be fixed.

5. On 10.7.2017 the plaintiff and his advocate were in court but the defendant and his advocate were not in court. Mr Gitonga, the plaintiff's advocate asked the court to dismiss the application on account of not having been prosecuted by the defendant. He invited the court to consider the issues he had raised in his written submissions.

6. I have perused the submissions filed by the plaintiff's advocate. They support the dismissal of the defendant's suit made vide this court's ruling delivered on **23.3.2017**. The defendant, who is the applicant, has not in any meaningful way controverted the assertions proffered by the plaintiff.

7. In the circumstances, this application is dismissed.

8. Costs are awarded to the plaintiff/respondent.

9. It is so ordered.

Delivered in open court at Chuka this **11th day of July, 2017** in the presence of:

CA: Ndegwa

Njeru Ithiga h/b D.J. Mbaya for Defendant

Frank Gitonga for the plaintiff

P.M. NJOROGE

JUDGE