



**REPUBLIC OF KENYA**

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

**CHUKA ELC CASE NO 256 OF 2017**

MWENDA KAJOGI.....PLAINTIFF

VERSUS

KIBERENGE MUNYUA..... 1<sup>ST</sup> DEFENDANT

MUNYUA MUKIRA.....2<sup>ND</sup> DEFENDANT

**RULING**

1. In his plaint dated 16<sup>th</sup> September, 2015 and filed in court on 28<sup>th</sup> April, 2017, almost two years later, the plaintiff prays for judgment to be entered against the defendants for (in his own words):-

- a) Illegal possession and acquisition of the land Parcel No. MUTHAMBI/KANDUNGU/396.
- b) To rescind the said lands parcel to the original owner.
- c) Vacation from the suit land.
- d) Costs of the suit.

2. The circumstances that spawned this ruling are rather sui generis. I have not encountered such circumstances in the past. Although the plaintiff is not represented by an advocate, all litigants have a duty to prosecute their cases diligently and to obey court orders.

3. The plaintiff on 4<sup>th</sup> July, 2017 obtained a date for mention for directions and the parties were to come to court on 26<sup>th</sup> July, 2017. The said date was not served upon the defendants. He came to court alone.

4. Upon confirmation that the plaintiff had not served the mention date for directions, the court ordered him to serve the next mention date for directions upon the defendants so that the parties would obtain directions on 26<sup>th</sup> September, 2017.

5. On 26<sup>th</sup> September, 2017, the plaintiff came to court and told the court that it was not his duty and responsibility to serve court orders upon the defendants. He went ahead to accuse the court of shirking its responsibility to serve the defendants with its orders. Despite patient explanation and advice by the court, the plaintiff was adamant that he would not serve upon the defendants, the orders issued by the court. Even after being given time to self-deliberate on the cause of action he was taking and its possible consequences, the plaintiff laconically told the court that he would not serve the defendants with any papers.

6. Obviously, our system is adversarial. Litigants have to openly state their cases. There can never be a secret trial. When litigants seek a date for directions, that date must be served upon the other parties. A suit cannot be heard with only one party present. When a party tells the court that he will never serve the other parties and that all he wants from the court are the orders he is seeking, he is in a circuitous manner telling the court that he does not want the suit to be heard and determined expeditiously. To me this amounts to constructive withdrawal of the suit in question.

7. Article 159(2) (a) of the constitution decrees that justice shall be done to all, irrespective of status. This constitutional requirement applies to all parties, be they plaintiffs, petitioners, defendants and respondents. Justice cannot be done to all if suits are heard in the absence of opposing parties.

8. Article 159(2) (b) of the Constitution decrees that justice shall not be delayed. By adamantly stating in the face of the court that he will not serve court orders upon the defendants, the plaintiff seeks to delay the hearing and determination of his suit.

9. Section 3 of the Environment and Land Court Act states that the overriding objective of this court is to facilitate the just, expeditious, proportionate and accessible resolution of disputes governed by this court. The plaintiff's conduct veritably flies in the face of this objective.

10. Section 18(c) of the Environment and Land Court Act requires this court to be guided by the principles of judicial authority contained in Article 159 of the Constitution. I have already dealt with the applicable principles.

11. I find that, the plaintiff, by openly telling the court, that he will not serve its orders upon the defendants, wants to unduly delay the hearing and determination of this suit. His conduct amounts to constructive withdrawal of this suit. As it is a constitutional imperative that justice be not delayed, I find that this suit merits dismissal.

12. In the circumstances, this suit is dismissed.

13. I grant no orders as to costs.

14. It is so ordered.

Delivered in open court at Chuka this **25<sup>th</sup> day of September, 2017** in the presence of:

CA: Ndegwa

Mwenda Kajogi - plaintiff

**P.M. NJOROGE**

**JUDGE**