



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT OF KENYA AT CHUKA**

**CHUKA ELC CASE NO 230 OF 2017**

**FORMERLY MERU ELC CASE NO.74 OF 2012**

**LUKE MUNGANIA INEBU.....PLAINTIFF**

**VERSUS**

**JOHANA M'ITABARI.....DEFENDANT**

**RULING**

1. This application is dated 30<sup>th</sup> November, 2017 and seeks orders:

1. That this application be certified urgent and be heard on priority basis.

2. That this honourable court be pleased to grant the applicant extension of time to give, issue and serve notice of appeal against the judgment of this court (Hon. Justice P. M. Njoroge) given at Chuka on 17<sup>th</sup> October, 2017 in Chuka Environment and land court at Chuka ELC No. 230 of 2017.

3. That the costs of this application be in the intended appeal.

2. The application has the following grounds:

a. That the judgment of the court was read in absence of the defendant and when the counsel handling the case was out of the country.

b. That the defendant has no telephone contact and relied on a neighbour who had left the locality.

c. That the defendant had to be sought physically to discuss the results of the judgment and give instructions and this took time and time to give notice of appeal expired.

d. That as what is involved are technical issues of law and facts it is just and fair and in interest of justice that the defendant is allowed to appeal to the court of appeal by allowing extension of time.

3. The application is supported by the affidavit of the applicant, JOHANA M' ITABARI, which says:

**"I JOHANA M'ITABARI of P. O. Box 3151-60200 MERU make oath and state as follows:**

1. That I am the defendant/applicant herein and therefore competent to make and swear this affidavit.

2. That when I instructed Maitai Rimita & Co. Advocates to defend me in this suit I gave them telephone No.0700218715 as my contact.

3. That the owner of the number is my neighbour and witness David M'Luuruma.

4. That unfortunately in September and October 2017 he was out of the locality due to drought to get pasture for his cattle.

5. That when judgment was delivered I did not know the date and even thereafter my advocate could not reach me.

6. That one Maitima sent some people to deliver the message physically and I reported to the advocate's office on 13<sup>th</sup> November, 2017 to be told that the judgment was against me.

7. That I was not satisfied with the said judgment and I pray that time to give notice of appeal be extended.

8. That the delay was not deliberate and I pray the court to give me chance.

9. That the contents of this affidavit are true to the best of my knowledge, information and belief.

4. The application was prosecuted by M/s Rimita on 20.12.2017. she told the court that she was relying on the grounds of the face of the application and on the applicant's supporting affidavit.

5. Having considered the pleadings in this application, I am inclined to grant the orders sought, in the interest of justice, even without waiting to hear the application interpartes.

6. In the circumstances, prayer 2 is granted.

7. Costs shall be in the intended appeal.

8. It is so ordered

Delivered in open court at Chuka this **20<sup>th</sup> day of December, 2017** in the presence of:

CA: Ndegwa

M/s Rimita for the applicant

**P. M. NJOROGE**

**JUDGE.**