



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**

**AT MERU**

**ELC CASE NO. 83 OF 2017**

**MARYAN MOHAMED CHEABRIL (Suing as the**

**Administratrix of the Estate of ASHA**

**JABRIL MOHAMED –Deceased.....PLAINTIFF**

**VERSUS**

**MICHAEL KOOME MBURUU.....1<sup>ST</sup> DEFENDANT**

**ISIOLO COUNTY GOVERNMENT.....2<sup>ND</sup> DEFENDANT**

**JEDIEL KIRIMI RUTERE.....3<sup>RD</sup> DEFENDANT**

**RULING**

Plaintiff filed an application of 9/3/2017 under a Certificate of Urgency. In it, plaintiff was seeking orders:

***THAT a temporary injunction do issue restraining the 1<sup>st</sup> Defendant whether by himself, his agents, servants from interfering in any manner with the property known as L.R No. 7918/07, from constructing, developing, leasing or from remaining on the plaintiff's property or erecting any building or structure thereon or any part thereof L.R. No. 7918/07 situated in Isiolo, pending the hearing and determination of this application.***

On 31/7/2017, the court gave directions as follows:

- The application of 8/3/2017 to be canvassed by way of written submission.
- Applicant to file and serve their submissions within two weeks.
- The Respondents to file and serve their submissions within 2 more weeks from date of service.
- Submissions on 2/11/2017.

On 2/11/2017, Applicant had not filed submissions they were seeking for more time. The reason for non-compliance with the court order was that they did not have instructions from their client. Counsel for 1<sup>st</sup> and 3<sup>rd</sup> Defendant urged the court to dismiss the application as applicant had failed to comply with courts directions.

Applicant made a rejoinder that the matter could not be dismissed since dismissal only applies if a matter has not been acted upon for a period of 12 months.

Pursuant to provisions of **Article 159 (2) (b) “Justice shall not be delayed”**.

This is a matter that was filed under a Certificate of Urgency. It follows that applicant desired the matter to be heard expeditiously. I note from annexures that construction was going on in the suit land by the time applicant approached the court. It means that the fate of such a project needs to be resolved as quickly as possible.

I have also taken into account the impact of the provisions of section 1A of CPC where it is provided that **“A party to civil proceedings or an advocate for such party is under a duty to assist the court to further the overriding objective of the Act and, to that effect, to participate in**

**the processes of the Court and to comply with the directions and orders of the Court?**

Further section 1B provides the duties of the court;

***For the purpose of furthering the overriding objective specified in section 1A, the Court shall handle all matters presented before it for the purpose of attaining the following aims:***

Ø The just determination of the proceedings

Ø The timely, disposal of the proceedings, and all the other proceedings in the Court, at a cost affordable by the respective parties.

The court gave directions on 31/7/2017 on how the application was to be argued. Applicant did not comply and this means that the application has not been argued.

The court would be failing to carry out its constitutionally given mandate if it was to allow applicant more time to file submissions.

I proceed to dismiss the application of 8/3/2017 with costs to 1<sup>st</sup> and 2<sup>nd</sup> Respondents.

**DATED, SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS 6<sup>TH</sup> DAY OF DECEMBER, 2017 IN THE PRESENCE OF:-**

CA: Janet

Ndege for Plaintiff /Applicant

Gitonga H/B Mwirigi for Defendant (1<sup>st</sup>) present

Kiome for 2<sup>nd</sup> Defendant

Murango Mwenda for 3<sup>rd</sup> Defendant absent

**L. N. MBUGUA**

**ELC JUDGE**