



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

**AT KITALE**

**LAND CASE NO. 19 OF 2014 (OS)**

**PETER KUTOYI MIKOI.....PLAINTIFF/RESPONDENT**

**VERSUS**

**CHEMA HOLDINGS LIMITED.....DEFENDANT/APPLICANT**

**R U L I N G**

1. This is a ruling in respect of an application brought by the Defendant/Applicant seeking to set aside the court's order of 20/1/2016 closing the defendant's case and that the defendant be allowed to call evidence in its defence. The Plaintiff/Respondent had testified and closed his case on 26/5/2015. Defence case was set down for hearing on 1/10/2015. For one reason or another, the defence case did not take off. On 20/1/2016 the defence case was closed without the defendant testifying.

2. The applicant's application is based on the supporting affidavit of Ronny Khisa an advocate in the firm of Kidiavai & Co. Advocates who act for the applicant. The advocate contends that the mode of communication with their client was through letters addressed to their client's postal address at Kitale. That the sole director of the applicant is Mary Chesoni who resides in Nairobi. That they have been addressing letters to Kitale address and that when Mary Chesoni sent one of her representatives to the firm to inquire about the progress of the case, it turned out that the case had been closed without any evidence from the defendant.

3. The advocate contends that they now have the cell phone of the director of the company who is willing to come to testify. That there will be no prejudice suffered by the plaintiff/respondent if the defence case is re-opened.

4. The applicant's application is opposed based on grounds of opposition filed in court on 16/3/2016. The respondent contends that the application is frivolous and is an abuse of the process of the court. That the application is an afterthought which should be dismissed.

5. I have gone through the applicant's application as well as the annexures thereto and the grounds of opposition. The only issue for determination in this matter is whether the applicant should be allowed to re-open the defence case. This is essentially a matter of discretion by the court. In exercising that discretion the court has to consider the surrounding circumstances.

6. The applicant has demonstrated that all correspondence regarding the progress of this matter were addressed to the respondent through its Kitale address. The only director of the applicant is Mary Chesoni who is mainly based in Nairobi due to her advanced age. This has not been denied. It is therefore possible that she could not have accessed her mails given the short period within which the

defence was to be conducted and time when the defence case was ordered closed.

7. In as much as possible all parties should be afforded opportunity to be heard. There is a defence on record in this matter. There is nothing to suggest that the defendant is out to delay the finalization of this case. This is a clear case in which discretion should be exercised in favour of the applicant. I therefore allow the application with the result that the court's order of 20/1/2016 closing the defence is hereby set aside. The defence case is hereby re-opened and the defendant is allowed to testify in its defence. The defendant shall pay costs of Kshs.10,000/= to the plaintiff to be paid within a period of 60 days from the date of this ruling.

It is so ordered.

Dated, signed and delivered at Kitale on this **13<sup>th</sup>** day of **September, 2016**.

**E. OBAGA**

**JUDGE**

**COURT**

Ruling signed in court at 3.00 pm in the absence of parties. Parties can read ruling at the registry.

Court Assistant – Isabellah.

**E. OBAGA**

**JUDGE**

**13/9/2016**