



**REPUBLIC OF KENYA**

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

**ELC CASE NO. 44 OF 2012**

**PAUL KIRIINYA..... PLAINTIFF**

***VERSUS***

**DELFINA KATHIRI.....DEFENDANT**

**RULING**

1. This is a ruling in respect of the application by plaintiff's counsel for the case to start afresh. Plaintiff testified on 22.1.2014 and was cross examined and re-examined on 17.3.2014. No other testimony has ever been taken.

2. On 26.7.2018 when case was listed for defence hearing counsel for plaintiff stated that in the interest of justice it was necessary for the case to start afresh averring that the matter is very emotive involving a mother and son and that it is necessary to see the demeanor of the witness.

3. Defence counsel on the other hand opposes the application for case to start afresh averring that the proceedings of Judge Njoroge are not in doubt, that the plaintiff had testified at length and was duly cross examined and re-examined and that the court is to follow the law and facts and not emotions.

4. I have perused the court record and I find that plaintiff's evidence was quite lengthy, so was the cross examination and re-examination. As submitted by defence counsel, judicial time is precious. Time is not an unlimited resource. I must also state that I am able to discern the hand written record of my brother Judge Njoroge. However, the fact that plaintiff gave lengthy testimony should not be a bar to have the case start afresh.

5. I note that the relationship of the parties is that of a son and a mother. I agree with plaintiff's counsel that the demeanor of witnesses in such a situation may be necessary.

6. I also note that the orders of 17.7.2018 giving a defence hearing date on 26.7.2018 must have been in error because plaintiff's case was never closed. If anything, the court had even allowed plaintiff to substitute a witness in place of one who had passed on.

7. Finally, I find that since I took over the matter on 11.10.2017, directions were never taken as to whether case should start denovo or not. Currently, the court's country wide are fast tracking cases which are over five years old. This being a 2012 matter, it falls in this bracket.

8. The defence need not fear that the matter will drag on as the court will endeavor to hear it on priority basis.

9. In the circumstances, I allow the application for case to start afresh. Since the court had indicated that case should proceed then the hearing is to kick off.

**DATED, SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS DAY OF 8<sup>TH</sup> NOVEMBER, 2018 IN THE PRESENCE OF:-**

C/A: Janet

C.P Mbaabu for plaintiff

Kithinji for defendant

Plaintiff

Defendant

**HON. LUCY. N. MBUGUA**

**ELC JUDGE**



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