



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

COMMERCIAL & TAX DIVISION

MILIMANI LAW COURTS

HCCC NO. 245 OF 2010

KABURI NJOROGE.....PLAINTIFF/APPLICANT

VS.

LUCY WANGUI NJUGUNA.....1ST DEFENDANT/RESPONDENT

BARCLAYS BANK OF

KENYA LIMITED.....2ND DEFENDANT/RESPONDENT

JOSEPH GIKONYO T/A

GARAM INVESTMENT.....3RD DEFENDANT/RESPONDENT

RULING

1. This suit has abated.
2. Kaburi Njoroge, the Plaintiff passed away on 4th April 2013. On 19th May 2014 leave was granted to Moses Njoroge Kaburi, George Murimi Kaburi and James Ndung'u Kaburi as personal representatives of the Plaintiff to substitute the Deceased.
3. Substitution required the Plaintiff to be amended by striking out the name of the deceased and replacing it with that of the personal representatives. As no period for amendment was specified then Order 8 Rule 6 of the Civil Procedure Rules 2010 applies. It reads:-

“Where the court has made an order giving any party leave to amend, unless that party amends within the period specified or, if no period is specified, within fourteen days, the order shall cease to have effect, without prejudice to the power of the court to extend the period”.

4. An attempt by the Plaintiffs to file an Amended Plaintiff more than a year later is ineffectual because the time for formalizing the substitution lapsed on or about 3rd June 2014. The leave granted ceased to have effect on that day with the result that this suit would abate on the same day. For this order 24 Rule 3 is instructive;

Procedure in case of death of one of several plaintiffs or of sole plaintiff [Order 24, rule 3.]

(1) Where one of two or more plaintiffs dies and the cause of action does not survive or continue to the surviving plaintiff or plaintiffs alone, or a sole plaintiff or sole surviving plaintiff dies and the cause of action survives or continues, the court, on an application made in that behalf, shall cause the legal representative of the deceased plaintiff to be made a party and shall proceed with the suit.

(2) Where within one year no application is made under subrule (1), the suit shall abate so far as the deceased plaintiff is concerned, and, on the application of the defendant, the court may award to him the costs which he may have incurred in defending the suit to be recovered from the estate of the deceased plaintiff:

Provided the court may, for good reason on application, extend the time.

5. For that reason, I grant prayer 2 of the Notice of Motion dated 1st February 2019. As the suit has abated then it cannot be available for dismissal for want of prosecution. Costs to the Applicant.

Dated, Signed and Delivered in Court at Eldoret this 28th Day of April 2020

F. TUIYOTT

JUDGE

ORDER

In view of the declaration of measures restricting Court operations due to the COVID-19 pandemic and in light of the directions issued by his Lordship, the Chief Justice on 17TH April 2020, this Ruling has been delivered to the parties through virtual platform.

F. TUIYOTT

JUDGE

PRESENT: