

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

FAMILY DIVISION

SUCCESSION CAUSE NO. 1198 OF 2002

IN THE MATTER OF THE ESTATE OF KINITI NDURA (DECEASED)

HANNAH WANJIKU KINITI.....APPLICANT

VERSUS

MWANGI KABAIKU.....RESPONDENT

RULING

1. The Applicant in the Application dated 31.12.2015 (Hannah Wanjiku Kiniti) was granted leave to substitute one MWANGI KABAIKU (Deceased) with RACHEL NJANGO MWANGI.

2. The Preliminary Objection dated 9.7.2018 is raised against the said substitution on the grounds that the suit had already abated and the suit contravenes order 24 Rule 7 of the Civil Procedure Rules and that whatsoever attempts to resuscitate the same are by law void.

3. The subject of preliminary objection has been addressed over a period of time. One of the most outstanding cases is that of **Mukisa Biscuits Manufacturing Company Limited vs. West End Distributors (1969) EA 696** where Sir Charles Newbold, P. stated as follows,

“A preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained if what is sought is the exercise of juridical discretion. The improper raising of points by way of preliminary objection does nothing and unnecessarily increase costs and, on occasion, confuse the issues. This improper practice should stop.”

4. I find that the Preliminary objection has no basis as the application for substitution was allowed on 14.6.2016. The only recourse for the respondent is seek a review of the said order or to file an appeal against it.

5. The Preliminary objection dated 9.7.2018 is accordingly dismissed with no orders as to costs.

DELIVERED, SIGNED AND DATED IN OPEN COURT THIS 21ST DAY OF JUNE, 2019

ASENATH ONGERI

JUDGE OF THE HIGH COURT OF KENYA, NAIROBI.