



**IN THE HIGH COURT OF KENYA AT NAIROBI**

**MILIMANI LAW COURTS**

**COMMERCIAL AND TAX DIVISION**

**CORAM: D. S. MAJANJA J.**

**CIVIL CASE NO. 1885 OF 1999**

**BETWEEN**

**ZACHARY WARWIMBO RUHANG'I.....1<sup>ST</sup> PLAINTIFF**

**S. KAHARI MUTHAMBURE.....2<sup>ND</sup> PLAINTIFF**

**JOHN PETER KAMAU.....3<sup>RD</sup> PLAINTIFF**

**AND**

**STANDARD CHARTERED BANK OF KENYA.....1<sup>ST</sup> DEFENDANT**

**KINYANJUI WANJUU T/A DOLPHIN AUCTIONEERS....2<sup>ND</sup> DEFENDANT**

**GERISHON KAMAU KIRIMA.....3<sup>RD</sup> DEFENDANT**

**RULING**

1. This matter has been on the court rolls for the last 19 years. The plaintiffs' case is that their properties, which were charged to the 1<sup>st</sup> defendant to secure certain advances, were sold to the 3<sup>rd</sup> defendant in circumstances that they considered fraudulent. They seek, amongst other orders, a declaration annulling the sale of the properties to the 3<sup>rd</sup> defendant. The suit was heard in part Azangalala J., who took the testimony of two witnesses; John Peter Ruhangi (PW 1) and Zachary Waruimbo Ruhangi (PW 3). In due course, the 2<sup>nd</sup> plaintiff, 2<sup>nd</sup> and 3<sup>rd</sup> defendants passed away. Thereafter the matter went into abeyance.

2. Counsel for the plaintiff requested for directions in the letter dated 20<sup>th</sup> April 2011 addressed to this court, inter alia, on the following terms:

*We act for the Plaintiffs herein.*

*The 2<sup>nd</sup> plaintiff passed away on 8<sup>th</sup> December 2009.*

*The 2<sup>nd</sup> and 3<sup>rd</sup> defendants have also since similarly passed away.*

*However under Order 24 Rule 2 of the Civil Procedure Rules 2010, 'where the cause of action survives' as in the instant case, "the Court shall cause an entry to that effect to be made on the record, and the suit shall proceed at the instance of the surviving Plaintiff or Plaintiffs, or against the surviving Defendant or Defendants"*

*Consequently we shall be obliged if you could list the above matter before the duty Judge for Mention for Directions to enable us deal with the matter further.*

3. Prior to filing that letter, counsel for the 2<sup>nd</sup> plaintiff had filed an application dated 8<sup>th</sup> October 2010 made under **Order 23 Rules 3** and **12** of the **Civil Procedure Rules** ("the **Rules**") seeking an order for substitution for the 2<sup>nd</sup> plaintiff. When the matter came up for directions before me, counsel elected to withdraw that application in favour of taking directions under **Order 24 Rule 2** of the **Rules** as shown in the

aforementioned letter. When I inquired from counsel whether he required to substitute all the deceased parties, he stated that it was not necessary in light of the provisions of **Order 24 Rule 2** of the **Rules** as the surviving plaintiff was ready to proceed with the matter against the surviving defendant as the cause of action was still alive.

4. The suit belongs to the plaintiffs and they or the surviving ones are entitled to proceed in the manner they deem fit subject to any consequences that may accrue following the death of any of the parties. Accordingly, and in line with the directions sought by counsel for the plaintiff, the surviving plaintiff may proceed against the 1<sup>st</sup> defendant since the 2<sup>nd</sup> and 3<sup>rd</sup> defendants are now deceased.

5. I now invite the parties to take directions for further hearing.

**DATED and DELIVERED at NAIROBI this 22<sup>nd</sup> day of NOVEMBER 2019.**

**D. S. MAJANJA**

**JUDGE**

Mr Meenye instructed by Meenye and Kirima Advocates for the plaintiffs.

Mr Chege instructed by Amollo & Gachoka Advocates for the 1<sup>st</sup> defendant.

Mr Mureithi instructed by Gadhia & Mucheru Advocates for the 2<sup>nd</sup> defendant.