

REPUBLIC OF KENYA

IN THE ENVIRONMENT & LAND COURT AT KERICHO

CIVIL SUIT NO. 52 OF 2013

SARAH CHEROGONY.....PLAINTIFF

VERSUS

JOHN KIPKEMOI ARAP ROTICH.....DEFENDANT

RULING

(Application for substitution of a deceased party; application not opposed; application allowed)

The application before me is that dated **20 April 2016**. It is brought under the provisions of Order 1 rules 10 (2) and 22 of the Civil **Procedure Rules**, and **Section 3A** of the **Civil Procedure Act, Cap 21, Laws of Kenya**. It is filed by counsel for the defendant and seeks orders to have the defendant John Kipkemoi arap Rotich substituted for Willy Kipkoech Kirui. The reason for the application is that the defendant is now deceased. The application is supported by the affidavit of the said Willy Kipkoech Kirui. He has stated that he is the son of the defendant. He has annexed a Certificate of Death which shows that the defendant died on **12 June 2015**. He has also annexed a Limited Grant of Letters of Administration Ad Litem, issued in his favour on **30 November 2015**.

The application is not opposed by the plaintiff.

I have on my part seen no reason to disallow the application. I only wish to point out that the proper procedure ought to have been that provided for in **Order 24**, and not **Order 1 Rule 10**. It is **Order 24** which makes provision for substitution of deceased parties. I trust that counsel for the defendant will stand guided in respect of future applications for substitution of a deceased party to a suit.

The application is otherwise allowed. I make no orders as to costs.

It is so ordered.

Dated, Signed and delivered on this 29th day of April, 2016

MUNYAO SILA

JUDGE

ENVIRONMENT AND LAND COURT

PRESENT:

Mr. Onesmus Langat for the defendant/applicant

Mr. Joshua Mutai for the Plaintiff/respondent