

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BUNGOMA

MISC. LAND AND ENVIRONMENT CASE NO. 58 OF 2015

AZIZA KIPSANG MOHAMED.....APPLICANT/RESPONDENT

VERSUS

ROYAM MOHAMMED JUMA.....1ST RESPONDENT/APPLICANT

ALI JUMA ABDULLAHI.....2ND RESPONDENT/APPLICANT

RULING

[1] The applicant brings this application under Section 1A, 1B and 3A of the Civil Procedure Act and section 3 of the Environment and Land Court Act Cap 12A and Order 1 Rule 10(2) Order 32 Rule 5 Order 51 Rule 1 and Order 50 Rule 6 of the Civil Procedure Act.

[2] The applicant prays that one Ali Juma Abdullahi the 2nd respondent be substituted in this suit by Arafa Hawa Juma. The Applicant has relied on a Medical Report of Dr. Wamukhoma dated 12/11/2015. The report says he is suffering from neurocognitive disorder – dementia and that his memory is poor and that he cannot remember the name of his wife and names of his children and that he is completely not oriented in time and place.

[3] The application is vehemently opposed by the respondent. It was argued that the person to be substituted has not demonstrated sufficient reasons for substitution. The names of the applicant are said to differ.

It is argued that his mental faculties are okay. The report itself is challenged. It is argued that Order 32 Rule 15 of the CPR is not met.

[4] Unfortunately the respondents have no medical report. They did not ask that the said Mr. Ali Juma Abdullahi of I/D No. 0971086 be examined by a doctor of their choice or even a Government doctor and/or Psychiatrist. Attacking the medical record from the bar is not good enough.

[5] The respondents can always test the issues herein through cross examination. I have nothing in which I can rely on to make me sustain the objections of the respondent.

[6] I allow the applicant to substitute Ali Juma Abdullahi with Arafa Hawa Juma. Each party shall bear its own costs.

Dated, signed and delivered at Bungoma this 27th day of July 2016

S.MUKUNYA - JUDGE

In presence of

Gladys/Joy - Court Assistants

Mr. Murunga for Mr. Onyando for the Respondent

Obok for the Applicant absent