



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL SUIT NO. 1610 OF 1997

KIMANI NJUGUNA.....PLAINTIFF

VERSUS

1. PENINA WARURA MWANGI..... 1ST DEFENDANT

2. KIRIIYU MERCHANTS AUCTIONEERS.....2ND DEFENDANT

R U L I N G

1. The Applicants Njuguna Kimani and Bernard Ngige Kimani brought an application for substitution of the Plaintiff before this court. The application is brought by way of a notice of motion dated 21st July, 2016. It is brought under Order 24 Rule 3 (1) of the Civil Procedure Rules. The grounds upon which the motion is premised are that the Plaintiff died on 12th October, 2015

2. The motion is supported by the affidavit of Benard Ngige Kimani sworn on 21st July, 2016. He stated that the Plaintiff died on 12th October, 2015. That they were issued with grant of letters of administration intestate on 16th March, 2016. The Applicants seek to be substituted so as to continue with execution.

3. The substantive law applicable in substitution is Order 24 of Civil Procedure Rules which provides:

Order 24 of the Civil Procedure Rules: -

1. The death of a plaintiff or defendant shall not cause the suit to abate if the cause of action survives or continues.

2. Where there are more plaintiffs or defendants than one, and any one of them dies, and where the cause of action survives or continues to the surviving plaintiff or plaintiffs alone or against the surviving defendant or defendants alone, 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.

4(1) Where one of two or more defendants dies and the cause of action does not survive or continue against the surviving defendant or defendants alone, or a sole defendant or sole surviving defendant 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 defendant to be made a party and shall proceed with the suit.

(2) Any person so made a party may make any defence appropriate to his character as legal representative of the deceased defendant.

(3) Where within one year no application is made under sub-rule (1), the suit shall abate as against the deceased defendant.

7(1) Where a suit abates or is dismissed under this Order, no fresh suit shall be brought on the same cause of action.

(2) The plaintiff or the person claiming to be the legal representative of a deceased plaintiff or the trustee or official receiver in the case of a bankrupt plaintiff may apply for an order to revive a suit which has abated or to set aside an order of dismissal; and, if it is proved that he was prevented by any sufficient cause from continuing the suit, the court shall revive the suit or set aside such dismissal upon such terms as to costs or otherwise as it thinks fit.

4. The Plaintiff in this case died on 12th October, 2015 as confirmed by the death certificate and this application made on 21st July, 2016. The motion was brought within the prescribed period. Having that in mind and the fact that the Applicants have proof of being legal representatives of the deceased's estate I am inclined to allow the application. The same is granted as prayed.

Dated, signed and delivered at Nairobi this 24th day of November, 2016.

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L NJUGUNA

JUDGE