



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KERUGOYA

ELC CASE NO. 147 OF 2013

NJUKI GICHIRA MUNGENA PLAINTIFF (DECEASED)

VERSUS

DANCUN NYAMU MURIUKI DEFENDANT

AND

PATRICK WAMUGUNDA GICHIRA NJUKI APPLICANT

RULING

The applicants herein moved the Court by way of Chamber Summons citing the provisions of **Order 24 Rule 3(1) and 7(2) of the Civil Procedure Rules** for the following orders:-

1. ***That the Honourable Court be pleased to enlarge time for applying to substitute the plaintiff herein who died on 14th May, 2013.***
2. ***That the Honourable Court be pleased to substitute the name of the deceased plaintiff with the following name:-***

PARTICK WAMUGUNDA GICHIRA NJUKI

3. ***That the Honourable Court be pleased to revive the suit herein***
4. ***That costs of this application be provided for***

The application is supported by the affidavit of the applicant PATRICK WAMUGUNDA GICHIRA NJUKI in which it is deponed, inter alia, that he is the administrator of the Estate of the deceased plaintiff herein NJUKI GICHIRA MUNGENA who died on 14th May 2013 while this matter was pending and that he obtained the grant of administration late (on 25th July 2014) due to financial constrains hence this application.

The application is opposed and in his grounds of opposition, the defendant/respondent states that the application is defective and an abuse of the Court process and ought to be dismissed and there are no good or sufficient reasons given by the applicant and so the orders sought are not available.

I have considered the application, the opposition thereto and the submissions by both Mr. Magee for the applicant and Mr. Munene for the respondent.

Mr. Munene in his submissions has taken issue with the fact that the application is brought by way of Chamber Summons and not by way of Notice of Motion as required. That complaint is well

founded. **Order 51 Rule 1 of the Civil Procedure Rules** is clear that applications shall be by motion. Counsel must always comply with the law and rules. However, in view of the provisions of Article 159 of the Constitution, that defect is not fatal.

The applicant is the administrator of the Estate of the deceased plaintiff who died on 14th May 2013 and obtained letters of Administration on 25th July 2014. He says he is desirous of prosecuting this suit which involves land. He says he was not able to obtain the said letters in time due to financial constraints. **Order 24 Rule (3) of the Civil Procedure Rules** allows the Court, “**for good reason**” to extend time within which to make a legal representative of a deceased plaintiff a party to a suit that had abated. Similarly, under **Order 24 Rule 7(2) of the Civil Procedure Rules**, the Court may revive a suit where the applicant shows that he was prevented “**by any sufficient cause**” from continuing the suit.

Has the applicant proved that there is “**good reason**” to extend time or that he was prevented by “**sufficient cause**” from continuing the suit? The applicable standard of proof is, of course, on a balance of probabilities. The applicant only obtained the limited grant on 25th July 2014 and obviously he could not make this application without the grant. As for the delay in obtaining the limited grant, he says it was due to financial constraints. I think that is a good enough reason. I am also of the view that the period between 14th May 2014 when the suit abated and 25th July 2014 when he obtained the limited grant and thereafter filed this application on 10th November 2014, and bearing in mind his financial constraints, does not amount to un-reasonable delay. Lastly, the suit involves a claim to own land and it would be in the interest of justice to have the same resolved in Court more so bearing in mind the emotive nature of such disputes. There is nothing to suggest that the defendant will suffer any prejudice and **Order 50(5) of the Civil Procedure Rules** gives the Court powers to extend the time set out by the Rules.

In the circumstances, I find that the applicant’s Notice of Motion dated 10th November 2014 is well merited and grant the orders sought therein with the result that the applicant be deemed as properly substituted in place of the deceased plaintiff.

Costs of this application agreed or taxed, will be borne by the applicant.

It is so ordered.

B.N. OLAO

JUDGE

13TH MARCH, 2015

17/3/2015

Before

B.N. Olao – Judge

Gichia – CC

Ms Kiragu for Applicant – present

Mr. Muriuki for Respondent – absent

COURT: Ruling delivered this 17th day of March, 2015 in open Court

Ms Kiragu for Applicant present

No appearance for Respondent.

B.N. OLAO

JUDGE

17TH MARCH, 2015