



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND

AT MILIMANI

ELC NO. 127 OF 2010 (O.S)

MAVJI RAMJI LADHA

HARJI RAMJI PATEL

KASOBI RAMJI PATEL & MAHENDRAKUMAR RAMJI LADHA.....APPLICANTS

VERSUS

PURBHAI GOPAL RAMJI PATEL.....RESPONDENT

RULING

1. Before this Court for determination is an oral Application by the counsel for the 1st Applicant seeking leave to put in an application to reinstate the suit by the 1st Applicant against the Respondent and for substitution of the deceased . The suit by the 1st Applicant abated as per Judge Eboso's Order delivered on 18/05/2021.

2. The application is opposed by the Respondent. It was the Respondent's position that no justifiable reason has been advanced. He contends that there has been no application for revival or setting aside of the orders by Judge Eboso for close to eight (8) years. Mr. Odoyo, for the Respondent avers that there was no indication from the family of the 1st Applicant that they would want to participate in the proceedings when they were last in court on 29/11/2021. He also brought to the attention of the Court that the counsel of the 1st Applicant was not properly on record.

3. Mr. Okalo, for the 1st Applicant indicated that he seeks to regularize his position and be record as the court notes that there are no documents filed by the Counsel for the 1st Applicant.

4. I have considered the arguments made by the parties. The main issue to be decided is whether the 1st Applicant has given sufficient reason to be granted leave to put his house in order. To begin with, I have perused the file and I find that the 1st Applicant's counsel is not properly on record as Mr. Okalo has not complied with the applicable rule, **Order 9 rule 7 of the Civil Procedure Rules**. Furthermore, I note that there is also no application before me to revive the suit by the 1st Applicant against the Respondent. If at all they would have been filed, they would have also been improperly on record. It is trite law that there must be a revival of a suit after abatement before substitution. Additionally, an Order for substitution without revival would be a nullity in law and of no effect.

5. In the case at hand, I am aware that one year has lapsed since the death of the 1st Applicant and that sometime has also passed since Judge Eboso issued an order that the 1st Applicant's suit has abated. The 1st Applicant has explained that during Mediation, he informed the parties that he seeks to regularize his position to be on record. He avers that his client was traveling to the United Kingdom for treatment. It is Mr. Okalo's contention that he would have put in his application, but they could not have done so without his client's signature.

6. He avers that mediation only collapsed on 10/02/2022. It is his case that the 1st Applicant began to face imminent threat since the suit abated in May 2021. He contends that there has been harassment by the Respondent. He informed the court that his client does not reside in the suit premises due to the constant harassment.

7. I am sympathetic to the 1st Applicant's case noting that time has passed, and their counsel has done nothing to protect their interests in this matter. **Apaloo JA** in the case of **Philip Keipto Chemwolo & another v Augustine Kubende (1986) eKLR** summed up on the question of whether or not to lock a litigant out of the seat of justice as follows:

“Blunder will continue to be made from time to time and it does not follow that because a mistake has been made that a party should suffer the penalty of not having his case heard on merit.”

8. The Court has inherent powers under section 3A of the Civil Procedure act to ensure justice is done to the parties in the suit. I have deeply reflected on the legal ramifications of locking the 1st Applicant out of the seat of justice and I am constrained to overlook the technicalities in this instant Application by invoking Article 159 of the Constitution which is very clear that Courts must not focus too much on procedural technicalities. The Constitution mandates the Court to make such orders as shall deem fit to ensure that justice is served to all. I believe the same will not cause prejudice to the Respondent.

9. Consequently, I find merit in the 1st Applicant’s oral application dated 21/02/2022.

10. Accordingly, for the reasons set out above, the 1st Applicant’s oral application is hereby allowed on the following terms: -

- a. The 1st Applicant is given 14 days to put his house in order.
- b. The Respondent has 14 days after service to respond if need be.
- c. Parties to go for Pretrial Conference before the Deputy Registrar on **28/3/2022**.
- d. Hearing of the main suit shall be on **28/04/2022**.
- e. Lastly, the 1st Applicant to pay **Kshs. 10,000.00** being the court attendance fees for the interpreter at the rise of the court today.

It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 21ST DAY OF FEBRUARY 2022.

MOGENI J

JUDGE

IN THE PRESENCE OF:

..... **FOR THE 1ST APPLICANT**

.....**FOR THE 2ND ,3RD AND 4TH APPLICANTS**

..... **FOR THE RESPONDENT**

VINCENT OWUOR COURT ASSISTANT