

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KITALE

CIVIL SUIT NO. 72 OF 2010

JOHN ABUNGA MOGAKA ::::::::::::::::::::::::::::::: PLAINTIFF

VERSUS

RICHARD KHISA MATAYO ::::::::::::::::::::::::::::::: DEFENDANT

RULING

1. The applicants are the administrators of the estate of the late Richard Khisa Matayo who died on 13/9/2013. They brought a notice of motion dated 19/12/2014 seeking to be substituted as defendants in this case as legal representatives of the deceased. They also sought an order reviving Kitale High Court Civil Case No. 76 of 2010. This case had been consolidated with the present one on 27/3/2012. The deceased was the plaintiff in that case and the plaintiff in the present case was the defendant in that case.

2. The respondents who were duly served did not file any grounds of opposition or replying affidavit. The application is therefore unopposed. The deceased died on 13/9/2013. there was no substitution made within one year as required. The suit has therefore abated. Under Order 24 rule 7 (2) any legal representative to a deceased is at liberty to apply for revival of a suit which has abated. The court may revive the suit if it is convinced that the legal representatives of the deceased were prevented for some reason from continuing with the case. In the present case, the applicants have explained that they filed for grant of letters of administration on 2/1/2014. It is not until 2/12/2014 that a grant was issued. This was due to the delay by the registry to process the grant. This application was made more than a month later. I find that the explanation given is convincing. I allow the applicants application with the result that the applicants are hereby allowed to continue the suit as legal representatives of the deceased. Civil suit No. 76 of 2010 which had abated is hereby revived. Costs shall be in the cause.

It is so ordered.

Dated, signed and delivered at Kitale on this 16th day of April, 2015.

E. OBAGA

JUDGE

In the presence of Mr Wafula for applicant – Present. Court Clerk Kassachoon.

E. OBAGA

JUDGE

16/4/2015