



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**MISCELLANEOUS APPLICATION NUMBER 1161 OF 2013**

**IN THE MATTER OF PETER NGIGI KAMORI**

**AND**

**IN THE MATTER OF MENTAL HEALTH ACT**

**CHAPTER 248 OF THE LAWS OF KENYA**

**ROSEMARY WANJIKU NGIGI. .... PETITIONER**

**VERSUS**

**MOSES KAMORI NGIGI. .... APPLICANT**

**RULING**

The Applicant in his Application by way of a Notice of Motion dated 3<sup>rd</sup> November, 2014 is seeking the following substantive Orders: -

1. That this Honourable court be pleased to hear this Application urgently since the Applicant works in the U.S.A and he is in the country upto 9<sup>th</sup> November, 2015.
2. That the suit herein which has abated be revived.
3. That **MOSES KAMORI NGIGI** the applicant herein be made a party in this suit to replace Rose Wanjiku Ngigi (Deceased) who was the Petitioner in this suit.
4. That this Honourable Court be pleased to hear the Petition herein urgently since the Applicant works in the U.S.A and he is in the country upto 9<sup>th</sup> November, 2015.
5. That in the alternative the attendance of **MOSES KAMORI NGIGI** (the Applicant) be dispensed with during the hearing of the petition herein.

The Application is premised on the grounds set out on the body of the Application and on the annexed Affidavit of **MOSES KAMORI NGIGI**.

In summary, the Petitioner **ROSEMARY WANJIKU NGIGI** is deceased and it's necessary to substitute her. She passed away on the 2<sup>nd</sup> November, 2014 and a copy of the Death Certificate is annexed.

The Applicant is the son of the Late Rosemary Wanjiku Ngigi, he works in the United States of America and was to leave the country on the 9<sup>th</sup> November, 2015 but had to prolong to 5<sup>th</sup> December, 2015.

The counsel for the Applicant in his submissions sought prayers 2 and 3 of the Application and urged the court to hear the Petition before the applicant can travel back to the United States of America on 5<sup>th</sup>

December, 2015 or in the alternative his attendance be dispensed with.

The Applicant is the Administrator of the Estate of his Deceased mother and a Grant of Letters of administration was issued to him on the 6<sup>th</sup> May, 2013.

On record are two Affidavits one by Manasseh Gakimo Ngigi sworn at Texas on the 5<sup>th</sup> November, 2015 and filed in court on 12<sup>th</sup> November, 2015 and another one by Zipporah Waithira Ngigi sworn at Texas in the United States of America on the 7<sup>th</sup> November, 2015 and filed in court on 12<sup>th</sup> November, 2015. The deponents are both beneficiaries to the estate of the late Rosemary Wanjiku Ngigi and are a son and daughter of Peter Ngigi Kamori. Both of them do not have any objection to the Applicant being appointed the Legal Guardian and Manager of the Estate of their father Peter Ngigi Kamori.

I have read the application together with the Affidavit in support and I have also taken into account the submissions by the Counsel for the Applicant. The delay in substituting the deceased has been explained and the reasons given are valid.

Prayers 2 and 3 of the Notice of Motion dated 3<sup>rd</sup> November, 2015 are accordingly allowed. The petition herein be heard on priority basis before the Petitioner can go back to the United States of America on the 5<sup>th</sup> December, 2015.

Dated and delivered at Nairobi this 19<sup>th</sup> day of November, 2015.

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**L NJUGUNA**

**JUDGE**

**In the presence of**

..... for the applicant