

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL SUIT NO. 3269 OF 1990

MUIRURI NJOROGE..... APPLICANT/PLAINTIFF

VERSUS

WANJIKU KIGURU. RESPONDENT/DEFENDANT

R U L I N G

The application before the court is the Amended Notice of Motion dated 21st May, 2013 by the Personal Representative of the Plaintiff. It mainly seeks leave to substitute the plaintiff after the court has revived the suit. The grounds given for the application are that the Plaintiff died on the 30th September, 2008 and that because the advocate conducting the suit for him was not informed of that fact, he did not seek substitution until the suit a bated one year thereafter. That when the information of the above said death was brought to the Counsel's attention and after he confirmed the same, he moved the court, through this application for the revival of the suit. That he also sought substitution of the Plaintiff by his Personal Representatives. The applicant accordingly sought that the application be allowed in the interest of justice.

The Respondent opposed the application on the ground that had the applicants held sufficient interest in the suit, they would have, at least, moved within the prescribed time to substitute the deceased and have prevented the abatement of the suit. She also averred that revival of the suit six years down the line will prejudice her as she will not recall the issues raised in cross-examination. That she would presently be unable to raise her witnesses for the hearing.

I have carefully considered the presented facts from both sides. It is unfortunate that it took the Plaintiffs personal representatives so long to inform his advocate of the plaintiff's death. However, accepting that the Plaintiffs advocate was genuine that he did not know of the Plaintiff's death until so informed in court, this court would take the position that he did not unduly delay to file this application. It is always the court's purpose to sustain a filed suit so that parties can get opportunity and access to present their case for final determination.

In this case the two personal representatives of the deceased properly appointed by court, are ready and willing to step in for the estate of the plaintiff to bring the suit to a satisfactory end whichever way it will go. In the circumstances, this court finds it in the interest of justice to revive the sit and allow the substitution sought.

ORDERS

- 1. The suit is hereby ordered revived.**
- 2. Sera Gathoni Muiruri and Jedidah Wanjiru Njoroge, personal Representatives of the Plaintiff are hereby substituted as the Plaintiffs for the purpose of proceeding with the suit until final determination and any other related purpose.**
- 3. Costs are in the cause.**

Dated and delivered at Nairobi this 19th day of February, 2014.

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D A ONYANCHA

JUDGE