



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MACHAKOS

CIVIL APPEAL NO. 68 OF 2007

CRESENT TRANSPORTERS CO. LTD. APPELLANT

VERSUS

JOHN MUNYAO KISOLO (suing for and on behalf of the estate of JAMES MATIVO MUNYU)
..... RESPONDENT

(Before B. Thurania Jaden J)

RULING

1. The application dated 18/12/2012 seeks the following orders:-
 1. **“That the Plaintiff’s suit be revived.**
 2. **That, the Plaintiff herein John Munyu Kisolo – now deceased be substituted by Agnes Kavindu Mativo the legal representative of the estate of the deceased.**
 3. **That, costs of this application be provided for.”**
2. The background to the application as deponed in the affidavit in support is that **James Mativo Munyu** died in a Road Traffic Accident on 27/4/1998. The Applicant is the wife of the deceased. The grant of Letters of Administration was issued to **John Munyu Kisolo**, the father to the deceased who instituted **CMCC Machakos No. 437 of 2000**. However, the same **John Munyu Kisolo** also passed away on 6/6/2001 and is the one the Applicant wishes to be substituted.
3. In opposition to the application, the Respondent filed the grounds of opposition dated 1/2/2013 and a replying affidavit. It is contended that the application is incompetent and substitution cannot be carried out in a non-existent suit and that the application for revival has been filed in the wrong court.
4. Parties herein agreed to canvass the application by way of written submissions. The Applicant did not file any and did not attend court on the next date. I have however perused the court record and considered the application, the reply to the same and the Respondent’s written submissions.
5. It is noteworthy that the suit (**SRMCC 437/00**) is the one which abated. Any application for revival must be made within the abated suit. I agree with the Respondent’s submission that the application is incompetent. Consequently, I strike out the same with costs.

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B. THURANIRA JADEN

JUDGE

Dated and delivered at Machakos this **19th** day of **June** 2014.

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B. THURANIRA JADEN

JUDGE