



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KISUMU

ELC CASE NO. 50 OF 2016

SELYNA Z. MUSANDU.....APPLICANT

-VERSUS-

THE COMMISSIONER OF LAND.....1ST DEFENDANT/RESPONDENT

REGISTRAR OF TITLES.....2ND DEFENDANT/RESPONDENT

THE NATIONAL LAND COMMISSIONER.....3RD DEFENDANT/RESPONDENT

GEORGE ADADA NYAGOWA.....4TH DEFENDANT

CRATER AUTOMOBILE (NBI) LIMITED.....5TH DEFENDANT

DR. NYAGUDI MUSANDU NYGUNDI.....APPLICANT

RULING

BRIEF FACTS

GEORGE ADADA NYAGOWA the 4th Defendant herein filed a Notice of Motion Application under Sections 1A,1B and 3A of the Civil Procedure Act , Order 24 (Rule 3 (2), Order 51 of the Civil Procedure Rules and all other enabling provisions of the law seeking the following orders:

1. That this matter be certified as urgent and be heard *ex parte* in the first instance.
2. That this Honourable court be pleased to dismiss this suit against the 4th and 5th Defendant which has since abated.
3. That the costs of this application be in the cause.

The Application was based on the grounds that the Plaintiff herein died on 27th May 2019 and the cause of action survives the Plaintiff's death. That 12 months have since lapsed yet the deceased Plaintiff has not been substituted and that the Defendant continues to suffer unnecessary anxiety due to the delay in the prosecution of the suit.

The Application was supported by the Affidavit of GEORGE ADADA NYAGOWA who deposed and stated that the Plaintiff's Advocate filed an Application for substitution of the Plaintiff on 13th May 2021 but has failed to prosecute the same. That in the circumstances where a Plaintiff is dead but the suit survives, the suit abates after one year if the Plaintiff is not substituted.

It was stated that the pendency of the suit is causing him needless anxiety, injustice and extreme prejudice given with the passage of time witnesses' memories continue to fade. That the suit herein ought to be dismissed since it has abated and litigation ought to come to an end.

This matter was filed on 15th December 2021 however, the same was not certified urgent and the court gave orders that the Respondent to respond within 7 days of service and parties to file and exchange submissions within 14 days of the last service.

I have perused the file and confirm that parties did not comply with the orders issued on 15th December 2021 as the Application was to be

canvassed by way of written submissions. This Application is hereby dismissed with costs.

DATED, SIGNED AND DELIVERED AT KISUMU THIS 11th DAY OF MARCH, 2022

ANTONY OMBWAYO

JUDGE

This ruling has been delivered to the parties by electronic mail due to measures restricting court operations due to the COVID-19 pandemic and in the light of the directions issued by his Lordship, the Chief Justice on 15th March 2020.