



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
ENVIRONMENT AND LAND COURT
ELC NO. 828 OF 2007

PAUL LANTEI.....1ST PLAINTIFF

JACOB MWANTO WANGORA.....2ND PLAINTIFF

VERSUS

PATRICK KANGETHE NJUGUNA.....1ST DEFENDANT

WELLINGTON ITOTIA.....2ND DEFENDANT

KAJIADO LAND REGISTRAR.....3RD DEFENDANT

FRANCIS MUNGAI KAGENI.....4TH DEFENDANT

RECHO KAGENI.....5TH DEFENDANT

DAVID MIGICHI KAGENI.....6TH DEFENDANT

BATI AKUL TSCHIANG.....7TH DEFENDANT

JOSEPH KATHURI NDATHI.....8TH DEFENDANT

JOSEPH WAIRIMU KIIRI.....9TH DEFENDANT

SUSAN NYAMBURA KARANJA.....10TH DEFENDANT

RULING

Before me is an application dated 5/9/2013 brought under Order 24 Rule 3(1) of the Civil Procedure Rules, 2010. The application is filed by David Lakishon Leponyo (the Applicant) who seeks an order that the legal representative of the Leponyo Ole Ntioe (deceased) be made a party herein. The application is premised on grounds outlined in the application and supported by an affidavit sworn on 6/9/2013. The Applicant states that he is a son of Leponyo Ole Ntione who is the deceased proprietor of the suit property and that the 1ST Plaintiff instituted the suit as the legal representative of the deceased since the Applicant

was a minor at the time. However, that the 1st Plaintiff is now deceased and the Applicant, having received the letters of administration to the estate of his father desires to join the suit to represent the estate of his deceased father in the matter.

This application is opposed by the Respondents. The Attorney General for the 3rd Defendant filed Grounds of Opposition dated 25/11/2013 and the 5th, 6th and 7th Defendants filed Grounds of Opposition dated 10/10/2013 to the application on grounds that the application is an abuse of the court process, has come late in the day and is fatally defective. The 6th Defendant swore a Replying Affidavit on 10/10/2013 wherein he deposed that there is no reason stated as to why there has been inordinate delay in filing the application. Further, the 6th Defendant deposed, that the application is fatally defective and should not be granted.

By consent of all the parties, the court directed that the application be canvassed by way of written submissions. Despite of this, the Applicant failed to file submissions. Wandabwa Advocates for the 4th, 5th, 6th and 7th Defendants filed submissions dated 21/3/2014. Counsel submitted that the suit has abated on 27/10/2010 since the 1st Plaintiff passed away on 27/10/2009. Further that Order 7(2) of the Civil Procedure Rules provides for revival of a suit that has abated by the legal representative which the Applicant has not prayed for.

The Applicant seeks to be joined to the suit to represent the 1st Plaintiff (deceased) who was also a representative of the Applicant's father. The procedure in case of death of a party is provided for under Order 24 of the Civil Procedure Rules. The law envisages the death of a party and hence provides at Rule 1 that the death of a party shall not cause the suit to abate if the cause of action survives or continues. The suit is kept alive by the substitution of such party with the legal representatives. An application for such substitution, however, pursuant to Rule 3 (2) must be made within 1 year or else the suit shall abate in the case of a deceased Plaintiff. The Applicant availed a copy of the death certificate of the deceased which reveals that his demise was on 27/10/2009. The application herein is therefore filed way after the suit abated. The Applicant also annexed a copy of the letters of administration in his favour for the estate of his deceased father, rectified on 31/7/2013. The Applicant however fails to inform the court of the circumstances leading to the rectification or when the original orders were issued. All the same, the suit did abate and the application herein cannot stand. As pointed out by Wandabwa Advocate, the procedures in place to revive a suit that has abated.

Having now considered the applicants Notice of Motion dated 5th September, 2013 and the written Submissions, the court finds the said application not merited. Consequently, the court dismisses the said application with costs in the cause.

It is so ordered.

Dated, Signed and Delivered this 6th day of **August** 2014

L.N. GACHERU

JUDGE

In the Presence of:-

.....For the Plaintiff

.....For the 1st Defendant

.....For the 2nd Defendant

.....For the 3rd Defendant

.....For the 4th, 5th, 6th, and 7th Defendants

.....For the 8th Defendant

.....For the 9th Defendant

.....For the 10th Defendant

Kamau: Court Clerk

L.N. GACHERU

JUDGE