

REPUBLIC OF KENYA

High Court at Nairobi (Milimani Commercial Courts)

Civil Case 3506 of 1989

GEOFREY GAITHO NGARACH.....PLAINTIFF

VERSUS

JUSTUS GAITHO NDORA.....DEFENDANT

RULING

Joseph Muirui Gaitho and Charles Muiruri Gaitho the applicant in the matter before me have filed a chamber summons dated 24/9/2012 under Order 24 rule 4 (1) and 7 (2), Order 1 rule 1c (2) and 22 of the CPR section 3A of the CPA seeking orders that they be made parties to the suit as the administrators of the estate of the defendant who is since deceased. They also seek that costs of the application be provided for

The application is supported by the affidavit of Geoffrey Gaitho Ngarachu and grounds that the defendant in the present suit has since passed on. That it took long to undertake the succession process and confirm the administrator of the deceased estate. That the said Joseph Muiruri Gaitho and Charles Muiruri Gaitho are administrators to the estate of the deceased defendant herein and that it is only prudent under the rules of natural justice and fairness that the deceased's name be substituted with that of the administrators of the estate.

In the supporting of Geoffrey Gaitho Ngarachu he states the defendant died intestate on the 4th of October, 2004. That the subject matter of this suit forms part of the estate of the deceased. That the outcome of this suit would have a direct bearing on the estate of the deceased. That it is in the interest of justice that the suit herein be revived and the legal administrators of the deceased be made party to the suit herein. That their lawyer had ceased communication with them and eventually ceased acting without their knowledge yet the delay of bringing the application to court has been occasioned by the long process of administration of the deceased estate and the confirmation of grant to the administrators of the deceased defendant.

The plaintiff /respondents did not file any replying affidavit. Their counsel filed grounds of opposition which stated that the suit abated within one year of 4/10/04 when the defendant died and there is therefore no suit pending in court.

That costs of the abated suit were taxed on the 22/10/10. That the plaintiffs have not demonstrated that they were prevented by sufficient cause from continuing with the suit within a year of the defendant's death. That the present application is unsustainable and an abuse of the court process and that it seems the plaintiff/applicant have lost interest in the suit and are only keen on dragging Joseph Muiruri Gaitho and Charles Muiruri Gaitho through a tedious court process. Parties filed written submissions. They highlighted them in court. I have considered the said submissions and the affidavits filed by the applicant. I have also carefully gone through the court file and also considered the provision of law Order 24. The issue is whether the applicant's application should be allowed. The applicant in the supporting affidavit merely stated that the matter took long to undertake the succession process and to confirm the administrators of the deceased estate. I find their affidavits rather vague. Counsel has given evidence in his submissions. I find that the applicants have not demonstrated that they were prevented by sufficient cause from continuing with the suit. The application has no merit and I dismiss it with costs.

Dated, signed and delivered this 11th Day of March 2013.

**R. OUGO
JUDGE**

In the Presence of:-

.....For the Applicant

.....For the Defendant

.....Court Clerk