

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

CIVIL SUIT NO 2795 of 1995

MAGAYU KIARIE MAGAYU.....PLAINTIFF

VERSUS

ELIZABETH WANJIRU NJOMO.....DEFENDANT

RULING

The application is dated 8/10/12. It is a Notice of Motion seeking that the suit be revived and that John Francis Njomo the legal representative of Elizabeth Wanjiru Njomo who is now deceased be made a party to this suit in her place of time. It is brought under order 24(4) and (7) and order 50 (2) rule (6) of the Civil Procedure Rule and Section 1A, 1B and 3A of the Civil Procedure Act.

The plaintiff avers that they learnt of the defendant’s death in October 2010 and by then a year had passed. That they had no way of knowing that the defendant had died.

The application was opposed. The respondent argues that the applicant is guilty of indolence by delaying the prosecuting his suit and even bringing the application on time and that his allegations are not supported by any evidence. That there has been no sufficient reason for delay in persecuting the suit, revival of the same and lastly that the relief sought in the plaint are not capable of being granted since no consent of land balance was required by the Land Control Board Act.

Counsels filed written submissions which I have read and considered. Having considered what is depones and submitted I find that the applicant’s reason is excusable. The applicant has explained that he did not know of the defendant’s death. Land is an emotive issue and it is necessary that the parties are heard and a decision made. In my view the applicant’s reasons are persuasive as he has explained sufficiently why he could not file suit. I find merit in the application and grant prayer No. 1 of the application dated 8/10/12. Prayer 2 is also granted and costs shall be in the cause.

Orders accordingly.

Dated, signed and delivered this 17th May 2013.

R. E. OUGO

JUDGE

In the presence of:-

.....For the Plaintiff/Applicant

.....For the Defendant/ respondent

.....Court Clerk

