



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT BUNGOMA**  
**ENVIRONMENT CASE NO. 3 of 2013**

**WILSON NATO..... PLAINTIFF**

**VERSUS**

**FRANCIS SIMIYU WEKESA.....DEFENDANT/APPLICANT**

**AND**

**JOSEPH NAMASUKA NATO .....APPLICANT/RESPONDENT**

**RULING**

The applicant has filed an application dated 9th September 2010 which was argued and opposed before me. In that application, the applicant asked for;

0. Reinstatement of the suit.
0. The plaintiff herein Wilson Nato now deceased be substituted and be replaced by Joseph Namasuka Nato the applicant herein.
0. That the L.P No. **Bungoma/Kabisi/323** registered in the names of the defendant be nullified, deregistered and or revoked.
0. That the L/.R. No. **No. Bungoma/Kabisi/323** be registered in the names of the applicant Joseph Namasuka Nato.
0. Costs be provided for.

I have perused the court file and noted the following from the records;

1. The applicant through his advocate M/s Shitsama & Co. filed an application on 17th June 1996 which sought to substitute Wilson Nato – deceased with Joseph Nato. This application was allowed by consent on 28th June 1996. Therefore prayer (ii) for substitution was not proper as it was already granted.
2. The applicant filed an application through the same advocates on 13th January 1999 seeking to reconstruct the file as apparently the court file was missing. Before this application was prosecuted, the suit was dismissed on 26th July 2001 for want of prosecution.
3. The applicant then filed the application dated 9th September 2010. This application was granted on 7th March 2012. These were the words of Justice S.J. Chitembwa sitting at Kakamega,

***“I have seen death certificate no. 404063, the application dated 9th September 2010 is granted as prayed.”***

This application had five prayers and one of them was reinstatement of the suit. The respondents were not happy with the orders granted by the judge and filed an application on 24th July 2012. In that

application, they are seeking to set aside the judge's orders of 7th March 2012.

Instead of arguing his application for setting aside, Counsel for the respondent entirely put arguments in opposition to the application of 9th September 2010. This application in my view was spent by the judge's order of 7th March 2012 which allowed it as prayed.

Having said this, there is nothing for me to write a ruling on. The respondent either takes a date for hearing of his application dated 23rd July 2012 or the suit is treated as concluded given the terms of prayer 3 and 4 of the application granted on 7th March 2012.

I say no more.

**RULING DATED, SIGNED, READ AND DELIVERED** in open court this 10th day of June 2013.

**A. OMOLLO**

**JUDGE.**