



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAKURU

CIVIL SUIT NO. 355 OF 2008

MICHAEL GACHARA & 13 OTHERS.....PLAINTIFFS

VERSUS

COUNTY COUNCIL OF NAROK.....DEFENDANT

RULING

The application by chamber summons dated 26th June, 2012 seeks the following orders; namely:-

1. **That this honourable court be pleased to revive the Plaintiff's suit.**
2. **That the court be pleased to substitute the 1st Plaintiff MICHAEL GACHARA KAMAU (DECEASED) with ANTHONY NDUNGU GACHARA the legal representative of the estate of the deceased.**
3. **That the court be pleased to substitute the 7th Plaintiff RAMARE GAITHO (DECEASED) with NAOMI WAIRIMU RAMARU, the legal representative of the estate of the deceased.**
4. **That costs of the application be provided for.**

The application was based on the following grounds; to wit:

1. **That the 1st Plaintiff Michael Gachara Kamau died on 4th January, 2008.**
2. **That the letters of administration were issued to Antony Ndungu Gachara on 13th June, 2012 for the purposes of pursuing this suit.**
3. **That the 7th Plaintiff died on 15th November, 2004.**
4. **That the letters of administration were issued on 13th June, 2012 to Naomi Wairimu Ramare for the purposes of pursuing this suit.**
5. **That the cause of action in this suit has survived the Plaintiffs demise.**
6. **That by the time the applicants were being issued with the letters of administration in respect of the deceased estate the suit had already abated.**
7. **That the Applicants are desirous of pursuing the suit for and on behalf of the deceased Plaintiff named herein.**
8. **That it is mete and just that this application be allowed.**

The supporting affidavits of **Antony Ndungu Gachara** and **Naomi Wairimu Ramare** sworn on 26th June, 2012 reiterated what was in the grounds on the face of the application except they annexed thereon the letters of administration issued to them under **section 54** of the **Law of Succession Act** and Death certificates of the deceased Plaintiffs they seek to substitute.

The Defendant filed Grounds and a Replying affidavit dated 12th March, 2013 respectively in opposition

of the application. The Replying Affidavit was sworn by **Albert S. Khaminwa**, advocate for the Defendant. It is contended that the application has been overtaken by events since the application for administration of the respective estates was done outside the time limitation provided for in law and that inordinate delay in pursuing the administration of the deceased's estate is a pointer that there is no claim against the Defendant; that the Applicants have failed to demonstrate their interest in pursuing the suit herein; that the suit has already abated and that re-institution of the suit will be prejudicial to the Defendant as it shall suffer delay in the delivery of justice.

This court heard this application on 11th June, 2013 when Mr. Karanja, learned counsel for the Applicants largely repeated what was contained in the application, the grounds on the face thereof and the averments in the supporting affidavits.

Mr. Kinga, learned counsel for the Defendant opposed the application and recounted what was deponed to in the Replying affidavit and the Grounds of opposition. He insisted that since the application by the applicants was not made within twelve months as required by law and no sufficient cause for the inordinate delay was given, the suit has already abated.

I have taken liberty to look at this file, it appears that this suit was originally number 1724 of 1990 and was transferred to this court for disposal and was given case number is 355 of 2008. That is to say the suit was filed way back in 1990 making it a very old case. The deceased 1st Plaintiff, Michael Gachara Kamau and 7th Plaintiff, Ramare Gaitho died on 4th January, 2008 and 15th November, 2004 respectively, the applicants herein through Succession Cause No. 75 of 2012 obtained letters of administration on 13th June, 2012. It is clear that the Applicants obtained the said letters in the same year they applied for them i.e. 2012 although they claim there was delay. It is noteworthy however, that the transfer of this matter from Nairobi to Nakuru must have contributed to the delay in prosecuting it. Further, this matter is still pending before this court and the Defendant was not apt enough to move the court to strike it out or proceed with the case for the other plaintiffs. I also appreciate that land matters are very emotive and close to the hearts of many Kenyans. This is one such case. In view of the foregoing and the provisions of **Order 24 Rule (3) (2)** of the **Civil Procedure Rules**, I find that the Applicants should not be locked out of the seat of justice. In the end, I allow the application dated 26th June, 2013 with costs being in the cause.

DATED and DELIVERED this 19th day of July, 2013.

R.P.V. WENDOH

JUDGE

PRESENT:

Ms Ndeda holding brief for Mr. Kibet for the plaintiffs

Ms Samich holding brief for Mr. Khaminwa for the defendant

Jared Okumu – Court Clerk