



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT**  
**AT NAIROBI**  
**MILIMANI LAW COURTS**

**Environmental & Land Case 371 of 1994**

**WILSON OSOLO.....PLAINTIFF**

**VERSUS**

**JOSEPH OBURA OCHOLA & 4 OTHERS.....DEFENDANTS**

**RULING**

**PROF. AGOLA AUMA OSOLO** and **RISPER KHASENYI KHAMALA** are the legal representatives of the estate of the late **George William Khamala Osolo**. They have taken out Summons in Chambers stated to be brought under the provisions of Orders 1 Rules 9 and 10; 24 Rules 1 and 3 of the Civil Procedure Rules and Sections 1A, 1B and 3A of the Civil Procedure Act. They pray that the suit herein be revived and the time for making the application under consideration be extended and that their names be substituted for that of Wilson Osolo as plaintiffs.

The grounds upon which the application is brought are that the suit land belonged to among others Wilson Osolo and was registered in the name of George William Khamala Osolo to hold the same in trust for himself and other children of Zakaria O. Osolo who was the father of George William Khamala Osolo and others. That the applicants became aware of the suit during year 2009. The applicants are the son of Zakaria Osolo and widow of George William Khamala, respectively.

The affidavit in support of the application is sworn by the first applicant for himself and on behalf of the 2<sup>nd</sup> applicant and he reiterates the grounds in support of the application adding that his late father Zakaria Osolo was entitled under custom and also under the Succession Act to a share of the suit land and the same was wrongly registered in the name of Wilson Ogana Osolo, then it is only fair that the suit be revived and the applicants be substituted as plaintiffs.

In opposition to the application were filed grounds of opposition and a Replying Affidavit sworn by Counsel for the 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> defendants. The application is described as being incurably defective and res judicata as a similar application was heard and determined on 23<sup>rd</sup> March, 2000. The applicants are said to lack locus standi.

I have considered the application and submissions by both Counsel and I have fully understood the same.

The plaintiff one Wilson Osolo is said to have died on 7<sup>th</sup> February, 2002 assuming that he was also known as Wilson Ogana Osolo. In law his suit abated exactly twelve(12) months after his death and that was on 7<sup>th</sup> February, 2003. As at the latter time no one, to the court's knowledge, was appointed as the Administrator of his estate and no one made an application as such administrator to be substituted in his place as plaintiff. The suit therefore stands abated as at 7.02.2003.

The present applicants do not claim to be the legal representatives of the plaintiff's estate. Their late father and husband were not parties to the present suit.

Their claims to the suit land which was registered in the name of one George Wilson Khamala Osolo, whoever that was, cannot be made through substitution of the plaintiff by persons not claiming under him or on his behalf or for the benefit of his estate. These applicants, I find, lack locus standi to bring this application.

The application made on 26<sup>th</sup> February, 1999 (not 20.11.98 and filed in court on 28.2.99?) was not brought by these parties and it did not seek on their behalf the orders they now seek. For that reason the present application cannot be described as being res judicata. The application fails for the other reasons given above and the same is dismissed with costs.

It is so ordered.

**DATED SIGNED AND DELIVERED AT NAIROBI THIS 10<sup>TH</sup> DAY OF FEBRUARY, 2012.**

**P.M. MWILU**  
**JUDGE**

In the presence of:

..... Advocate for Applicants

..... Advocate for 2<sup>nd</sup>,4<sup>th</sup> & 5<sup>th</sup> defendants

..... Court Clerk

**P.M. MWILU**  
**JUDGE**