



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI

ELC CASE NO. 1938 OF 1994

RUTH NJERI KAMAU & TWO OTHERS.....PLAINTIFF
VERSUS
EDITH WANJIKU KAMAU.....DEFENDANT

RULING

1. **JACKSON NGIGI KAMAU** did on the 18th October 2011 take out a Notice of Motion expressed to be brought under the Provisions of Order 24 Rule 4(2), Order 51 Rule 1 of the Civil Procedure Rules and Sections 1A (1) (2) (3) 1B, 1(a) (b) (c) (d) and (e) of the Civil Procedure Act and all other enabling Provisions of the Law. He prayed that this suit be revived and the court do extend time for such revival and the applicant be substituted as a defendant in place of the deceased defendant. He prayed further that the costs of the application be provided for. The application is grounded on the basis that the defendant died in 1999 and the applicant who is also the legal representative of the estate of the deceased defendant inadvertently did not take any steps since, and he thought that it is in the interest of Justice that the application be allowed.

2. In his supporting affidavit he swore that the deceased died on 19th November, 1999 and left the suit still pending in court. He then applied for and obtained probate of the deceased's written will of which he produced a copy. He gave the reason for not pursuing the suit as lack of money and knowledge and prayed that the application be allowed in the interest of justice. The subject matters of the suit are some three parcels of land against which orders were issued restraining dealings with the lands which are still in place as the orders were to subsist until the suit was determined.

3. This suit lapsed a year after the deceased's death. That was during the year 2000. By the said date probate of the written will was not obtained until 26th November, 2001 and confirmation of the same followed on 16th October, 2002. The property described in the confirmed Grant forms part of the suit lands. The application was served on the plaintiffs' counsel who did not attend court at the hearing of the application and hence the same stands unopposed.

4. There is no doubting that a lot of time has passed since the deceased passed away. Suit itself was filed in 1994 and the order restraining dealings with the suit lands has never been set aside. The suit lands are still intact. I accept the explanation by the applicant for the delay and although on the face of it the delay appears inordinate I would excuse the same in the interest of justice so that the real issues over the suit lands are determined upon a full hearing. In the premises I would hereby allow the application which is

unopposed in any event and order that the suit be set down for hearing by the applicant, after his substitution as a defendant within ninety (90) days of today. Costs in the cause.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 22ND DAY OF MARCH 2012.

P.M. MWILU

JUDGE

In the presence of:-

Obogo H/B for Kimathi Advocate for Applicant

Amos Njoroge Court Clerk

P.M. MWILU

JUDGE