



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CIVIL SUIT 2264 OF 2007**

**CHARLES MBUGUA**

**NJUGUNA.....PLAINTIFF**

**VERSUS**

**CHARLES NDUNGU**

**KARIUKI.....DEFENDANT**

**RULING**

This Court was to consider a preliminary objection raised by the Defendant's Advocate with regard to the Plaintiff's application dated 19<sup>th</sup> March 2012. A chronology of the events leading to the said application and preliminary objection is as follows. The Plaintiff filed a suit on 9<sup>th</sup> November 2007, and an application of the same date seeking an injunction against the Defendant restraining him from interfering in any way with the land parcel known Loc 16/KIARUTARA/697 (the suit land). The Application was heard and orders given by Lady Justice Ang'awa on 11<sup>th</sup> June 2008 that the *status quo* be maintained, and that the Plaintiff and Defendant be restrained from cutting down any of the 107 trees upon the land until the determination of the Plaintiff's suit.

The Defendant then filed an application dated 11<sup>th</sup> April 2011 seeking an order that the Plaintiff's suit be dismissed with costs, which order was granted by Honourable Justice Mboghli Msagha on 22<sup>nd</sup> June 2011. The Plaintiff then in turn filed an application dated 1<sup>st</sup> August 2011 seeking a review and setting aside of the orders of 22<sup>nd</sup> June 2011. While that application was pending, the Plaintiff filed another application dated 19<sup>th</sup> March 2012, seeking orders that one Gachau Nyaga be joined as an Interested Party, and that the Defendant's agents and/or servants and personal representatives, and the said Interested Party be restrained from interfering with, transferring selling and/or disposing of the suit land.

It has transpired from the Defendant's Advocate's Notice of Preliminary Objection dated 3<sup>rd</sup> April 2012, and submissions made in court during the hearing of the said preliminary objection on 9<sup>th</sup> May 2012 that the Defendant died in November 2011. The Plaintiff in the meantime filed another application dated 3<sup>rd</sup> May 2012 seeking orders that one Agnes Wandia Kariuki be substituted as the Defendant.

After consideration of all the pleadings filed herein and the facts as summarized in the foregoing, I find that I cannot proceed with a determination of the Plaintiff's applications of 19<sup>th</sup> March 2012 and 3<sup>rd</sup> May 2012 until the determination of his application of 1<sup>st</sup> August 2011. This is for reasons that there is presently no suit by the Plaintiff existing before this Court, and the outcome of the said application of 1<sup>st</sup> August 2011 will determine whether the suit filed by the Plaintiff on 9<sup>th</sup> November 2007 will be revived or not, and whether the *status quo ante* will thereby revert. The Plaintiff's applications dated 19<sup>th</sup> March 2012 and 3<sup>rd</sup> May 2012, and the Defendant's Notice of Preliminary Objection dated 3<sup>rd</sup> April 2012 are therefore stayed until the hearing and determination of the Plaintiff's application dated 1<sup>st</sup> August 2011.

Pursuant to the provisions of section 3A and 63(e) of the Civil Procedure Act I also hereby order that the *status quo* be maintained as follows pending the hearing and determination of the application dated 1<sup>st</sup> August 2011 or until further orders:

1. That the Plaintiff, the intended Interested Party nor any of the deceased Defendant's agents, servants

or personal representatives shall transfer, sell and/or otherwise dispose of the land parcel known Loc 16/KIARUTARA/697.

2. That the Plaintiff shall not interfere with the Intended Interested Party's possession of the said parcel of land.

Orders accordingly.

Dated, signed and delivered in open court at Nairobi this \_\_\_\_20<sup>th</sup>\_\_\_\_ day of \_\_\_\_July\_\_\_\_, 2012.

**P. NYAMWEYA**

**JUDGE**