

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI

Civil Case 94 of 1991

JOHN THEURI NGUNJIRI.....PLAINTIFF

-versus-

MUKAMI GICHUKI }

NGUNJIRI KIRUGUMI }.....DEFENDANTS

RULING

The subject matter of this ruling is the motion dated 8th August 2011, in which John Theuri Ngunjiri, the Applicant herein seeks for an order reviving this suit. He swore an affidavit in support of the motion. Rose Mukami Gichuki, the Defendant/Respondent, filed a replying affidavit to oppose the motion.

I have considered the grounds set out on the face of the motion plus the facts deponed in the affidavit filed for and against the motion. It is the submission of the Applicant that the Plaintiff died on 13th March 2004 before the determination of this suit hence there is need to substitute

the Plaintiff and to have the suit revived. The Applicant averred that he was unable to apply for substitution within a period of 1 year because it took time for him to obtain a death certificate. He claimed the death certificate was hidden from him until the year 2009. The Defendant has opposed the application on the basis that the motion is incompetent since the suit abated about 7 years ago. It is true the suit abated after a period of one year from the date of the death of the deceased. The Law however gave the court a wide discretion to revive the suit if good reasons are given. The Applicant stated that he was unable to obtain the deceased's death certificate and that is why he did not succeed the deceased within a short time. I am convinced that is a good reason. Consequently, I allow the motion dated 8th August 2011. Costs shall be in the cause.

Dated and delivered this 17th day of August 2012.

J. K. SERGON

JUDGE