



REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Environmental & Land Case 2361 of 2007

**PAUL KIRWA.....PLAINTIFF
VERSUS**

JACKSON KIPLAGAT ARAP MELI.....1ST DEFENDANT

sued as the administrator of the estate of the late KEMELI KOGO SIMEON)

ROSELYNE CHEMAIYO KENEL.....2ND DEFENDANT

sued as the administratrix of the estate of the late ELIJAH KIPTARUS KENEI)

ANNE JEPKOECH TENAI.....3RD DEFENDANT

Sued as an administratrix of the estate of the late MICHAEL MALAKWEN ARAP TENAI)

DINA JEPKORIRI TENAI4TH DEFENDANT

sued as the administratrix of the Estate of the late MICHAEL MALAKWEN ARP TENAI)

COMMISSIONER OF LANDS.....5TH DEFENDANT

THE HON. ATTORNEY GENERAL.....6TH DEFENDANT

RULING

1. Before me is a Notice of Motion dated the 1/10/12 brought by the plaintiff/applicant under section 1A 3,3A of the Civil Procedure Act, Order 24 rule 3 of the civil Procedure Rules 2010, Order 40 r 1 (10) (1) (a) (b) (c) and all other provisions of the law.

The applicant is seeking the following orders.

i. Spent.

ii. That the suit dismissed by the court on its own motion be reinstated.

iii. That the name of Paul Kirwa (deceased) be substituted by Grace Wangoi Kirwa and Joseph Gitau Kirwa as the Administrators of the Estate of Paul Kirwa deceased.

iv. That the court makes an order for preservation and inspection of the suit land for purposes of surveying the land and ascertain the acreage due to the applicant and authorize the

applicants to entire the land and be allowed to occupy their share.

v. That the provincial police officer Rift Valley province ensures compliance with the said orders.

vi. That costs of this application be in the cause.

The application is based on the following grounds

i. That the plaintiff in the present suit died on 16th December 2012.

ii. That the said Grace Wangoi Kirwa and Joseph Gitau Kirwa are legal representatives of the estate of the deceased as granted by the court on the 16th August 2012.

iii. That the court on its own motion after serving notice of dismissal upon all parties dismissed the case for want of prosecution.

iv. That the applicants never received any communication from the advocate on record and thus they were not aware that case was listed for dismissal.

v. That the reason as to why the case did not proceed is the plaintiff had passed on and the applicants had not obtained letters of administration.

vi. That they were granted the letter of administration ad litem they should be substituted as plaintiffs in this case.

vii. That the suit land was transferred to Paul Kirwa Plaintiff (deceased) Jackson Kiplagat Arap Kemei as an administrator of the estate of Kemeli Kego Simeon, Rosaline Chemaiyo Kenei, The Administratrix of the estate of Elijah Kiptarus Kenei, Anne Jepkoech Tenai Administratrix of the estate of Malakwen Arap Tenai and Dinar Jepkorir Tenai the Administratrix of the Estate of Michael Arap Tenai as tenants in common.

viii. That section 23(1) of the Registration of Title Act 300 gives the plaintiff and by extension the applicants whose ownership is absolute and indefeasible.

2. The application is supported by the affidavit of Grace Wangoi Kirwa the administrator of the estate of Paul Kirwa Simatwo. She avers that the plaintiff died on the 16/12/11 whilst this suit was pending. That the suit was dismissed. The reason she gives for not prosecuting the suit was that they were not able to proceed as the deceased became sick and they were not able to concentrate on proceeding with the case. That in August 2012 they petitioned for letters of administration and the orders were granted. She avers and pleads with the Court to restate the suit as the plaintiff was deceased and they did not receive the notice of dismissal.

3. I note that the defendants though served did not attend the hearing of this application. It was therefore not challenged. From the Court record this suit was dismissed on 19/1/12 after the parties were served with a Notice under order 17 rule 2(1) and (4) of the Civil Procedure Rule.

4. The applicant has explained the reasons why they could proceed with the suit. The plaintiff was granted leave to amend the suit on the 11/11/09. The Court noted that from 2009 to 2012 nothing had happened in prosecuting the suit. The applicant does not disclose when the plaintiff got sick and for how long. In the interest of justice however I will give them the benefit of doubt and reinstate the suit. Prayer no. 2 is granted. The suit is reinstated. The plaintiff is also granted prayer No.3 as the applicant has shown that the plaintiff died in December 2011 and she is one of the administrators of the deceased plaintiff's estate. I decline to grant prayer No. 4 as the applicant has failed to explain the in her affidavit why the said order is being sought. It is also mandatory order and the applicant has not made out a clear case for the said order. Having not granted prayer No. 4 the applicant is not entitled to prayer no. 5. Costs shall be

in the cause.

Orders accordingly.

Dated, signed and delivered this day of 8TH November 2012

R. OUGO
JUDGE

.....for the Plaintiff/Applicant

.....for the Defendants/Respondents

.....Court Clerk