



REPUBLIC OF KENYA

High Court at Meru

Environmental & Land Case 18 of 2006

ABEDNEGO GOLDEN NJERU.....PLAINTIFF

VERSUS

M'MWORIA NKABO.....DEFENDANT

RULING

This application dated 15th October 2012 was brought by way of Notice of Motion. The Applicant Faith Tirindi Njeru sought orders:

1. That this Honourable Court be pleased to revive this suit which abated by this Court's order on 2nd July, 2012.
2. That this Honourable Court be pleased to retain the Inhibition Order lodged upon the suit land and to restrain the Defendant from wasting, cutting trees and/or vegetation or anything growing on the suit premises and from harassing the Applicant or the heirs or Dependants of the late Plaintiff until the determination of this suit.
3. That Costs of this application be provided for.

Mr. Riungu for the applicant stated that the plaintiff Abednego Golden Njeru was deceased. The widow, Faith Tirindi Njeru, wanted to revive this case after obtaining a Limited Grant of Letters of Administration Ad Litem from the High Court through the Registry at Meru on 31st August, 2012. Mr. Riungu relied on the supporting affidavit of the applicant. He referred to the contents of the affidavit where the applicant claims that she only learnt about the suit in question 6 months after her husband's

death. This gave her little time to obtain documents which would entitle her to apply to be entered in the suit as the legal representative of the Plaintiff, the late Abednego Golden Njeru. Mr Riungu also stated that the applicant was a poor person and so needed time to gather the resources necessary to handle requisite Succession Issues. He felt that the reasons adduced by the applicant were sufficient to persuade the Court to revive the suit in accordance with its powers donated by Order 24 rule 7, Sub-rule 2, of the Civil Procedure Rules 2010 and also Section 3A of the Civil Procedure Act. He therefore prayed for Orders as per prayers 1, 2 and 3 of the application.

Mr. Akwalu for the Defendant/Respondent opposed the application and relied on the replying affidavit of the Defendant/Respondent sworn on 30th November, 2012. He argued that the applicant had not indicated what would follow if the Court granted prayer No.1. In his view, the applicant should have sought a prayer that she be substituted in the suit as the legal representative of the deceased plaintiff. He

also argued that an Order under Order 24 Rule 7 Sub rule 2 could not be granted as a matter of course. There must be enough reasons to persuade the court.

He argued that even if the applicant was made aware of the suit six months after her husband's death, she had six months to take appropriate action. He also felt that the applicant was not truthful. He prayed that the application be dismissed.

I have considered the positions taken by the the two sides. Rule 24 (7) (2) allows an applicant claiming to be the legal representative of a deceased plaintiff to apply for an order to revive a suit which has abated if it is proved that the applicant was prevented by any sufficient reason from continuing the suit. Section 3A donates inherent power to the Court to make such Orders as may be necessary for the ends of justice to be achieved.

I find that the applicant has shown sufficient reason to persuade this Court to revive the subject suit. I also find that such revival would be necessary for the ends of justice to be achieved and to allow the suit to be determined on its merits. I, therefore, grant the following orders:

1. That this suit be revived.
2. That the INHIBITION ORDER lodged upon the suit land be retained and the defendant/respondent be restrained from wasting, cutting trees and/or vegetation or anything growing on the suit premises and from harassing the applicant or the heirs or Dependants of the late plaintiff until the determination of this suit.
3. That Costs be in the cause.

Dated and Signed at Meru this 6th day of December 2012.

P. M. NJOROGE
JUDGE

Coram: P. M. Njoroge J.

Akwalu for Defendant/Respondent

Ruthugua HB for Riungu

Cc Mwonjaru/Mutinda

Dated, Signed and delivered at Meru in open Court this 20th day of December 2012.

P. M. NJOROGE
JUDGE