



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**

**AT NYERI**

**CIVIL CASE NO. 49 OF 2008**

**BEATRICE WAIRIMU GACHIRI** (*Suing as the administrator and personal representative of the estate of GACHIRI NJEGE (DECEASED)*).....**PLAINTIFF**

**JOSEPH MWAI KAMURWA**.....**APPLICANT**

**VERSUS**

**JOSEPH GACHIRI**.....**1<sup>ST</sup> DEFENDANT**  
**JOHNSON MURIITHI KINYUA**.....**2<sup>ND</sup> DEFENDANT**  
**DISTRICT LAND REGISTRAR, NYERI REGISTRY**.....**3<sup>RD</sup> DEFENDANT**  
**THE HON. ATTORNEY GENERAL**.....**4<sup>TH</sup> DEFENDANT**

**RULING**

Under *Order XXIII rule 3* of the Civil Procedure Rules, (now *Order 24 rule 3*), **JOSEPH MWAI KAMURWA**, the applicant herein, took out the Summons dated 31<sup>st</sup> March 2010 in which he applied for the following orders:

- (i)** *That the Honourable court be pleased to order the applicant JOSEPH MWAI KAMURWA to be substituted as the Plaintiff in this suit.*
- (ii)** *That the pleadings herein be amended accordingly.*
- (iii)** *That the costs of this application be provided for.*

The Applicant filed an affidavit he swore in support of the Summons. **JOHNSON MURIITHI KINYUA**, the 2<sup>nd</sup> Defendant herein filed a replying affidavit to oppose the application.

The facts giving rise to the Summons are short and straightforward. Beatrice Wairimu Gachiri in her capacity as the legal representative of the Estate of Gachiri Njege, deceased, sued the Defendants herein by way of the Plaint dated 15<sup>th</sup> May 2008 in which she sought for judgement in the following terms:

**(a) Land parcel number:**

**(i) Iriani/Chehe/371**

***Belongs to the Estate of Gachiri Njege and the same to be registered in the name of Beatrice Wairimu Gachiri as the administrator of the said Estate.***

***(b) The Registrar, Nyeri District Land Registry do rectify the register with regard to the property known as Iriani/Chehe/371 and the registration of Joseph Gachiri Njege and Johnson Muriithi Kinyua be accordingly cancelled.***

***(c) Costs be borne by the Defendants.***

Beatrice Wairimu Gachiri passed away on 7<sup>th</sup> May 2009 while this suit is still pending hearing and determination. The Applicant has now beseeched this Court to substitute the deceased's name with his as the Plaintiff herein. He annexed to his affidavit a grant of Limited Letters of Administration in respect of the Estate of Beatrice Wairimu Gachiri, deceased. The 2<sup>nd</sup> Defendant opposed the application on the grounds that the applicant was not the legal representative of the Estate of Gachiri Njege, deceased. I have considered the rival submissions plus the material placed before this Court. There is no doubt that the late Beatrice Wairimu Gachiri was the legal representative of the Estate of Gachiri Njege, deceased. She filed this suit in her capacity as the legal representative of the Estate of Gachiri Njege, deceased. Unfortunately she passed on before the suit was heard and determined. The Applicant has now obtained Letters of Administration in respect of the Estate of Beatrice Wairimu Gachiri, deceased. He has now asked this Court to issue an order to have him substitute her as the Plaintiff. With respect, I agree with the submissions of Mr. Magee, learned advocate for the 2<sup>nd</sup> Defendant, that the orders sought by the applicant herein cannot be granted because the Applicant is not the legal representative of the Estate of Gachiri Njege, deceased. He is simply the legal representative of the Estate of Beatrice Wairimu Gachiri, deceased. The Applicant therefore has no locus to succeed the Estate of Gachiri Njege, deceased without first obtaining the Letters of Administration. Having come to aforesaid conclusion, the application is for dismissal which I hereby order with costs to the 2<sup>nd</sup> Defendant.

***Dated and delivered at Nyeri this 18<sup>th</sup> day of February 2011.***

**J. K. SERGON  
JUDGE**

In open court in the presence of Miss Keli holding brief Ndana for the 2<sup>nd</sup> Defendant. No appearance for 1<sup>st</sup> Defendant. No appearance for Nderi.