

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

ELC CIVIL SUIT NO. 60 OF 2008

NAHASHON KARIUKI PLAINTIFF

VERSUS

SILAS OGETO DEFENDANT

RULING

The plaintiff herein filed a suit against the defendant in respect of a commercial plot No. 162 Kimathi Riverbank Shopping Centre allocated by the City Council of Nairobi. The defendant was taken ill and hospitalized before summons upon him were served. He subsequently passed on before service was effected upon him. The plaintiff's suit then abated. There is now before me an application by way of Chamber Summons under Order XXIII Rule 8(2) and Order 1 Rule 10 of the Civil Procedure Rules seeking to revive this suit and that Charles Mokoya Maroko and Yabesh Basweti be substituted as the defendants in place of Silas Ogeto, now deceased.

The application is opposed. I have gone through the material before me and the submissions by both the learned counsel. The reasons advanced by the plaintiff leading to default on his part are plausible and there is no reason why he should be denied the opportunity to revive this suit which abated for no blame on his part. In any case, no prejudice has been alleged shall befall the defendants if the suit is revived.

Accordingly this application succeeds and each party shall bear his own costs.

Orders accordingly.

Dated, signed and delivered at Nairobi this 29th day of June, 2011

**A. MBOGHOLI MSAGHA
JUDGE**