



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

**AT NYERI**

**CIVIL CASE NO. 62 OF 2009**

**SAMUEL MUGO MICHUKI**  
**ELIZABETH WANJIKU MICHUKI.....PLAINTIFFS**

**VERSUS**

**PETER MBIRI MICHUKI.....DEFENDANT**

**RULING**

The subject matter of this ruling is the summons dated 2<sup>nd</sup> December 2009 in which **Elizabeth Wanjiku Mugo**, seeks to have the suit revived. The summons is supported by the affidavit of Elizabeth Wanjiku Mugo. **Peter Mbiri Michuki**, filed a replying affidavit he swore to oppose the summons.

It is the applicant's submission that on 24<sup>th</sup> December 2002, the Plaintiff herein passed away and that on 5<sup>th</sup> May 2005 the legal representative was joined to this suit. The Applicant avers that she was not advised by her former advocate that the suit had lapsed by the time she was enjoined to the suit.

The Defendant on his part is of the view that the Applicant had lost interest to pursue this case because even after substitution she has never taken any steps to fix the case for hearing.

I have carefully considered the rival submissions plus the grounds set out on the face of the Motion and the facts deponed in the affidavit. The Court has a wide discretion in allowing such applications so long as sufficient reasons are given. It is not in dispute that the deceased Plaintiff was substituted by the Applicant on 5<sup>th</sup> May 2005. The applicant has stated that she was not informed by her erstwhile advocate that the suit had already abated at the time of substitution. She claimed she only came to learn about that when she engaged the services of a new advocate. I am convinced the Applicant has given a plausible explanation for her delay to cause the suit to be revived. I have no reason to doubt here sincerity. I allow the summons dated 2<sup>nd</sup> December 2009 with costs abiding the outcome of the suit.

***Dated and delivered at Nyeri this 21<sup>st</sup> day of October 2011.***

**J. K. SERGON**  
**JUDGE**

In open court in the presence of Mr. Wambugu for the Defendant/Respondent. No appearance for the Applicant.