



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

**AT EMBU**

**MISC. APPLICATION NO. 15 OF 2008**

**CYRUS NYAGA KABUTE.....1<sup>ST</sup> PLAINTIFF/RESPONDENT**  
**SILAS NJAGI NJUE.....2<sup>ND</sup> PLAINTIFF/RESPONDENT**

**VERSUS**

**FREDRICK NYAGA DAVID.....1<sup>ST</sup> RESPONDENT/APPLICANT**  
**FRANCIS NJERU DAVID.....2<sup>ND</sup> RESPONDENT/APPLICANT**  
**LEONARD KATHUMU KARANI.....3<sup>RD</sup> RESPONDENT/APPLICANT**  
**JOHN KABUTE KIMOTHO.....4<sup>TH</sup> RESPONDENT/APPLICANT**

**R U L I N G**

This is the Application Notice of Motion dated 18/7/2011 brought under Order XVI rule 5 Civil Procedure Rules for dismissal of the Plaintiff's suit for Want of Prosecution. It's supported by the affidavit of the Applicant's Counsel.

There is no Replying affidavit to the Application. The 2<sup>nd</sup> Respondent/Plaintiff says the 1<sup>st</sup> Plaintiff died on 19/5/2010. The record shows that on Application of the Plaintiffs the court on 3/7/2008 transferred Kerugoya Civil Suit No.444/03 to Embu Court. As far as this Miscellaneous Application is concerned with the issuance of the said Order the Application was spent. It appears that inspite of the Order issued the Kerugoya matter has never been transferred. The 1<sup>st</sup> Plaintiff is said to have died on 19/5/2010. Since no Application has been filed in time with Order 24 rule 3(2) Civil Procedure Rules and it's over a year since his death its clear his suit has abated.

However given that there is no matter registered here as former Kerugoya PMCC 444/03 I have nothing to dismiss as far as this Miscellaneous No.15/08 is concerned.

I therefore direct Counsel to consult with the registry incharge to confirm if the said Kerugoya Civil Case No.444/03 was ever transferred and if so transferred the number assigned to it.

Thereafter she can make the necessary application in that particular file.

Under the same breathe I direct the Deputy Register to call for the file immediately if it was never called for.

The Application stands dismissed. No orders as to costs.

**DELIVERED, SIGNED AND DATED AT EMBU THIS 17<sup>th</sup> DAY OF NOVEMBER 2011.**

**H.I. ONG'UDI**

**J U D G E**