



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

MILIMANI LAW COURTS

Civil Appeal 390 of 1980

NJUGUNA KAHIRIAPPELLANT

AND

NJUGUNA MAIRESPONDENT

R U L I N G

1. The application herein is the Chamber Summons dated 24/08/2009 brought by John Njenga Njuguna the administrator of the estate of Njuguna Kahiri (deceased) praying for an order that the name of Njuguna Kahiri (deceased) be substituted with the name of John Njenga Njuguna the administrator of the estate. The Applicant also prays that costs of the application be in the cause.
2. The application is supported by the affidavit of the Applicant sworn on 24/08/2009. The deponent says that the late Njuguna Kahiri, the Appellant in this appeal was the deponent's father. The Applicant says that on 18/12/1985, he was issued with Letters of Administration Intestate to the estate of Njuguna Kahiri. Annexed to the deponent's affidavit are copies of Certificate of Death No. 134195 dated 16/08/1985 in respect of Njuguna Kahiri who died at Gatundu Hospital aged 90 years on 20/05/1985. There is also a copy of Certificate of Confirmation of a Grant dated 15/10/1992 issued to John Njenga Njuguna in respect of the estate of Njuguna Kahiri. There is also a copy of the Grant Form P & A dated 18/12/1985 annexed to the supporting affidavit.
3. Though the application and a hearing notice were both duly served on the Respondent, Njuguna Mai, the Respondent neither filed Replying papers nor appeared for the hearing of the application.
4. The background of this case is as follows. The appeal herein emanated from the judgment of the Learned Resident Magistrate in Nrb. Civil Suit No. 1467 of 1977. The Appellant in the appeal was the Defendant while the Respondent in the appeal was the Plaintiff in the lower court. The Plaintiff had sued for recovery of the sum of Kshs.5,400/= and for other orders as detailed in the plaint.
5. The suit in the lower court was heard and judgment was entered for the Plaintiff as against the Defendant in the sum of Kshs.5880/= plus costs of the suit and interest.
6. On appeal, the appeal court found that the contract which formed the basis of the Plaintiff's claim in the lower court was statute barred and therefore that the Plaintiff could not succeed on any claim brought under the said contract. The appeal, brought by Njuguna Kahiri was allowed on the 08/11/1984 with costs to the Appellant.
7. It is on the basis of the above that John Njenga Njuguna now prays that he should be allowed to step in his fathers shoes and carry on with the affairs of the deceased's estate.
8. I have now considered the application and note that there is no rebuttal to the Applicant's application. In my view, it is understandable why the Respondent is not interested in this application. The Respondent's interest in the suit before the lower court was for

recovery of damages incurred as a result of the Appellant having allegedly trespassed on the land that had been sold to the Respondent way back in 1961.

9. In the premises, I am satisfied that the Applicant's application dated 24/05/2009 has merit. The application is hereby allowed in terms of prayer (1) thereof. Costs of this application shall be in the cause.
10. Having made this finding, I direct that the Applicant, may now proceed to pursue other interests touching on the deceased's estate.

Orders accordingly.

Dated and delivered at Nairobi this 5th day of May, 2010.

R.N. SITATI

JUDGE

Read and delivered in the presence of:-

John Njenga Njuguna (present) Appellant in person

No appearance for Respondent

Weche- court clerk