



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

**Civil Suit 501 of 1998**

**JOHN MUNGAI KARUA.....PLAINTIFF**

**VERSUS**

**MUGUGA FARMERS CO-OPERATIVE SOCIETY. LTD.....1<sup>ST</sup> DEFENDANT**  
**MUGUGA INVESIMENT CO. LTD.....2<sup>ND</sup> DEFENDANT**  
**S.K. WAKAHIA.....3<sup>RD</sup> DEFENDANT**  
**F. N. MIRINGA.....4<sup>TH</sup> DEFENDANT**  
**B N. WANDA.....5<sup>TH</sup> DEFENDANT**

**RULING**

John Mungai Karua instituted this suit against the respondents, a co-operative society limited, an investment company and three individuals, who are officials of the investment company. The plaint was filed on 16<sup>th</sup> November, 1998. Unfortunately, before the determination of the case, the plaintiff died on 3<sup>rd</sup> September, 2004. In terms of **Order 23 rule 3** of the **Civil Procedure Rules**, the suit abated one year after his death as no application was made to cause his legal representative to be made a party to the suit. No such application was made until 3<sup>rd</sup> May, 2006 when the instant application was brought. It seeks the revival of the plaintiff's claim. It is on record that the legal representative, who is the widow of the deceased, the applicant herein obtained a grant of representation on 3<sup>rd</sup> November, 2005. The applicant avers that she was unaware of this suit until recently; that the deceased was residing in Nakuru at the time of his death while the applicant lived in Kiambu; that she only became aware of the existence of this case when she came across papers relating to it.

In a supplementary affidavit, the applicant has deposed that being a house wife living away from the deceased, she was not conversant with the deceased person's business affairs in Nakuru; that the subject matter of the dispute is land of substantial value.

In reply the respondents have argued that the applicant has not shown sufficient justification for the revival of the suit; that there has been inordinate delay in bringing this application and that the revival of the suit would be prejudicial to the respondents as the 2<sup>nd</sup> defendant is no longer functional and its assets divided and distributed to its members, while the 1<sup>st</sup> defendant too was dissolved in 1988 and the 5<sup>th</sup> defendant is deceased. It is finally argued that the applicant

has not demonstrated the existence of a cause of action.

I have considered these arguments and the authorities cited by the applicant's advocate. I reiterate that by operation of the law, the suit abated one year after the death of the plaintiff as no application was made within one year to join his legal representative. However, in terms of **Order 23 rule 8(2)** of the **Civil Procedure Rules**, the applicant herein being a legal representative of the plaintiff may apply for an order to revive the suit which has abated. The court will order revival of a suit if the applicant satisfies it that he/she was prevented by any sufficient cause from continuing the suit. Has the applicant demonstrated that she was prevented by a sufficient cause from continuing with the suit?

The applicant has averred that she was not aware of the existence of the suit because she lives in Kiambu while her deceased husband lived in Nakuru. That she learnt of the case in May, 2006 and immediately instructed an advocate who brought the present application the same month.

In a society where it is common for men not to share information regarding their businesses and sometimes even investments including any dispute from those businesses or investments with their wives, it is indeed possible that the deceased did not disclose to the applicant about this case. But immediately she learnt of it, she acted with promptitude. To that extent, I find that the applicant has discharged the burden of demonstrating she was prevented by the fact of her ignorance of the existence of the suit, which in my view is a sufficient ground from continuing with the case.

The issues raised regarding the merit of the suit, the dissolution of 1<sup>st</sup> defendant and the death of the 5<sup>th</sup> defendant are not for consideration in an application for revival of the suit.

For the reasons stated, the abated suit is revived and the applicant may appropriately apply for substitution.

Costs to the respondents.

**Dated, Signed and Delivered at Nakuru this 4<sup>th</sup> day of June, 2010.**

**W. OUKO**  
**JUDGE**