

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYERI

CIVIL CASE NO. 11 OF 2009

**NEPHAT KIGUTA KING'ORI.....1ST
PLAINTIFF/APPLICANT**

**NEWTON IGOKO KING'ORI.....2ND
PLAINTIFF/APPLICANT**

**WANJOHI KING'ORI
KIGUTA.....3RD PLAINTIFF/APPLICANT**

VERSUS

**HABEL KING'ORI KIGUTA.....DEFENDANT
(DECEASED)**

AND

**JANE GATHONI KING'ORI.....1ST
RESPONDENT**

**GRACE WARUGURU MATHENGE.....2ND
RESPONDENT**

RULING

The subject matter of this ruling is the Motion dated 12th May 2010 in which Nephath Kiguta King'ori, Newton Igoko King'ori and Wanjohi King'ori Kiguta the Plaintiffs herein, have sought for an order to enjoin Jane Gathoni King'ori and Grace Waruguru Mathenge to be enjoined as the 2nd and 3rd Defendants in this suit. The Motion is said to be brought under the provisions of Order I rule 3 and 7 of the Civil Procedure Rules. It is supported by the affidavit of Nephath Kiguta King'ori. The intended 2nd and the 3rd Defendants filed grounds of opposition to resist the Motion.

I have considered the oral submissions of Msrs A. Kariuki and King'ori, learned advocates for the Plaintiffs and the proposed 2nd and 3rd Defendants respectively. I have further considered the grounds set out on the face of the Motion and the facts deposed in the support affidavit plus the grounds of opposition. The substantive suit is expressed in the Plaint dated 22nd January 2009 in which the Plaintiffs are seeking for orders of injunction to restrain the 1st Defendant i.e. Habel King'ori Kiguta from disposing of the parcel of land known as **L.R. NO. OTHAYA/IHURIRIO/698** until the beneficiaries are catered for. It would appear the 1st Defendant proceeded to subdivide the aforesaid parcel of land into seven subdivisions i.e. **OTHAYA/IHURIRIO/1386 – 1392**. There is evidence that two subdivisions were transferred to the proposed 2nd and 3rd Defendants. **L.R. NO. OTHAYA/IHURIRIO/1391** was transferred to Jane Gathoni King'ori and **L.R. NO. OTHAYA/IHURIRIO/1392** was transferred and registered in the joint names of Habel King'ori Kiguta, Jane Gathoni King'ori and Grace Waruguru Mathenge. It is the submission of the Plaintiffs that the aforesaid transfers were done when there was a valid court order restraining the 1st Defendant from doing so. The Proposed Defendants opposed the Motion on the basis that the suit has abated as against Habel King'ori Kiguta, deceased. There is no dispute that Habel King'ori Kiguta died on 19th October 2009. The law clearly states that the suit shall stand as having abated if one year passes before the deceased is substituted. As of 19th October 2010, the late Habel King'ori Kiguta had not been substituted with a legal representative. With respect, I agree with the submissions of Mr. King'ori that as of now this suit stands as having abated hence there is no competent suit that the proposed 2nd and 3rd Defendants can be enjoined. Being of that view, the Motion is for dismissal. It is dismissed with costs to the proposed 2nd and 3rd Defendants.

Dated and delivered at Nyeri this 19th day of November 2010.

J. K. SERGON

JUDGE

In open court in the presence of Mr. Ombongi holding brief A. K. Kariuki for the Applicant and Mr. Kingori for the Respondent.