



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

**AT MERU**

**CIVIL SUIT NO. 321 OF 1993**

*Lesiit J.*

**M'MUGAMBI**

**M'MURUGU.....PLAINTIFF**

**VERSUS**

**RUFUS KIAMBATI**

**M'IKUBU.....DEFENDANT**

**RULING**

The applicant in this case is George Kirima a son of the deceased who is the plaintiff in this suit. He is seeking an order of this court to revive this suit and appoint him as a legal representative of the deceased plaintiff in order to prosecute the suit on his behalf. The application is brought under Order xxiii rule 8(2) of the Civil Procedure Rules. The application is dated 20<sup>th</sup> March 2000. It is based on three grounds:

1. That is only fair and just that this suit be revived as the applicant and other members of the deceased family are in occupation of the suit land.
2. The applicant is a lay man who did not know that he ought to have filed an application for appointment of legal representative within one year from the date of the death of the deceased.
3. The applicant is the legal representative of the deceased plaintiff.

There is no affidavit in support of this application. George Kirima argued the application in person. Initially he gave evidence in support of the suit before applying to be appointed a plaintiff in this suit. The only relevant thing the applicant stated in his sworn statement in court was that his father who is the plaintiff in the suit died in 1998; that he filed a succession cause No. 49 of 200 from which he obtained letters of administration which he has produced as Exhibit 6. He said that he is desirous to prosecute this case to its logical conclusion.

I have had occasion to go through the papers filed in this suit. I noted that the current application which is dated 30<sup>th</sup> March 2000 seeks the very same prayers as the one he filed dated 29<sup>th</sup> September 2009. The application dated 29<sup>th</sup> September was argued before Hon. Kasango J. on the 24<sup>th</sup> November 2009 in her ruling the learned judge observed the similarity between the application argued before her and the one dated 30<sup>th</sup> March 2000 which is the one before me. The learned Judge found that the latter application

dated 29<sup>th</sup> September 2009 was an abuse of the court process and for that reason the learned Judge dismissed it. The current application has not therefore been considered on its merits.

I have considered the application the applicant has shown that the plaintiff is deceased he has produced the death certificate the applicant has also shown that he obtained letters of administration for the estate of the deceased plaintiff who is his father. The grant of letters of administration were obtained in a Succession Cause No. 49 of 2000 the letters were issued to the applicant on the 7<sup>th</sup> of August 2009. Considering that the applicant obtained the grant of letters of administration into the estate of the deceased on 7<sup>th</sup> of August 2009 I find that the delay in prosecuting the instant application is reasonably explained. I allow their petition in terms of prayer 1 and 2 of the Chamber Summons dated 20<sup>th</sup> March 2000 in the following terms:

1. This suit be and is hereby revived.
2. GEORGE KIRIMA the legal representative of the deceased plaintiff be and is hereby appointed to prosecute the suit on behalf of and in substitution to the plaintiff.
3. The costs of the application be borne by the applicant.

Read, signed and delivered at Meru on this 5<sup>th</sup> November 2010.

**LESIT, J**  
**JUDGE**