



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KERICHO
Civil Suit 65 of 2004

ESTHER CHEPKURUI LABOSO PLAINTIFF

VERSUS

JOHN KIPNGENO SOI DEFENDANT/RESPONDENT

AND

PIUS CHEPKWONYAPPLICANT

RULING

Substituting a party deceased with a legal representative

I: Background

1. The subject of the main suit is land. LR. Kericho/Chemagel/450. The original plaintiff, one Esther Chepkirui Laboso(*now deceased*) sued her brother in law for fraud. Her trial was begun before Kimaru J on the 30th November, 2005 where she gave evidence. It was adjourned and a second witness gave evidence on the 7th February, 2006. The matter did not proceed to further hearing.
2. On the 12th of August, 2006 the plaintiff passed away. The applicant, a son to the deceased claims that his uncle/defendant herein intends to evict him and their family from the land.
3. On the 13th November, 2007 an application was filed seeking to substitute the plaintiff (*deceased*).

II: Application 13th November, 2007

4. Under **Order XXIV r 3(1) (12)** and **Section 3A** of the Civil Procedure Rules, the applicant states that the plaintiff deceased died on 12th August, 2006 before the suit was finalized. The respondent has since allegedly chased them from the suit property.
5. In the meantime the applicant had obtained letter of grant limited to further representation of the suit. He obtained these letters on 18th October, 2007. He now wishes to continue the suit from where it had left off.

III: Findings

6. Under **Section 3A** of the Civil Procedure Act I accordingly allow this application. The cause survived the deceased. The letters of grant limited to filing suit was only obtained on 18th October, 2007.

7. There will be orders that the applicant be enjoined to this suit as a legal representative. That an amended plaint be filed and sent within fourteen (14) days and an amended defence be filed within seven (7) days of service.

8. The costs will be in the cause.

DATED this 25th day of May, 2009 at KERICHO

M.A. ANG'AWA

JUDGE

Advocates

J.K. Rono advocate instructed by M/S J.K. Rono & Co. advocates for the Applicant – present

J.M. Motanya advocate instructed by M/S J.M. Motanya & Co. advocate

for the defendant/respondent – present