



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT ELDORET**

**Civil Suit 76 of 2005**

**GEMINIA INSURANCE CO. LIMITED ..... PLAINTIFF**

**VERSUS**

**CHARLES TOROITICH ..... DEFENDANT**

**RULING**

I have perused the record. The Late Justice Kaburu Bauni reserved the Judgment on 4.3.08 after hearing the case. However, sadly he passed away before delivering the Judgment.

What is the way forward? Under Order 17, Rule 10 – where a Judge is prevented by death, transfer or other cause from concluding the trial of the suit or the hearing of an application, his successor may deal with any evidence taken down by him under the Rules as if such evidence had been taken down by him or under his direction and may proceed with the suit or application from the stage at which his predecessor left it.

I then asked myself at what stage is a trial concluded? From reading Stround’s Judicial Dictionary, 3<sup>rd</sup> Edition A “trial” is the conclusion by a competent tribunal of questions in issue in legal proceedings whether civil or criminal.

In Black’s Law Dictionary 7<sup>th</sup> Edition, “trial” is defined inter alia as “formal judicial examination of evidence and determination of legal claims in an adversary proceedings.”

In the light of the foregoing I am of the view that conclusion of a trial refers to full hearing and final determination of a suit. A trial includes delivering of Judgment in a civil matter. As a result the trial in this suit had not been concluded.

I therefore do order that any Judge at Eldoret do take over the trial of this suit to its final determination. I accordingly do hereby take over the hearing of the suit and proceed to prepare and deliver the Judgment.

Judgment shall be on 20<sup>th</sup> July, 2009 at 11 a.m.

DATED AND DELIVERED AT ELDORET ON THIS 13<sup>TH</sup> DAY OF MAY, 2009.

**M.K. IBRAHIM**

**JUDGE**

In the presence of:

Mr. Kibor for the Plaintiff

No appearance for the Defendant