



REPUBLIC OF KENYA

**IN THE HIGH COURT OF KENYA
AT NAIROBI
MIIMANI LAW COURTS
Civil Case 2201 of 1999**

NDIRITU KAHUHO.....PLAINTIFF

VERSUS

SETTLEMENT FUND TRUSTEES.....1ST DEFENDANT

KIPRABUNYIA TANDUI.....2ND DEFENDANT

LILIAN JEPKOSKEI MUTAI.....3RD DEFENDANT

AND

JULIUS NGOTHO NDIRITU.....APPLICANT

RULING

1. The application before me is the Chamber Summons dated 7/12/2007, brought under Order XXIII Rules 8(2) and 12 of the Civil Procedure Rules seeking ORDERS THAT:-

(a) This suit which has abated be revived.

(b) Costs of this application be provided for.

The application is based on the grounds that:-

1. *The Plaintiff died before the suit was concluded.*

2. *The cause of action which involved parcels of land UASIN GISHU/BURNT FOREST/71 and UASIN GISHU/BURNT FOREST/94 survive the death of the Plaintiff*

3. *Circumstances such as the distance between the Plaintiffs' place [of] residence and the place of work of the Applicant and other family problems prevented the Applicant from taking the next steps earlier.*

4. *This is a fit instance where the suit should be revived in the interest of justice.*

5. Also as per the annexed affidavit of JULIUS NGOTHO NDERITU, the Applicant herein.

2. The affidavit in support is sworn by JULIUS NGOTHO NDERITU of Box 34 Burnt Forest who says that he is a church Minister in the Presbyterian Church of East Africa and the eldest son of the deceased Plaintiff. He deposes that his father Nderitu Kahuho died on 6/03/2006 as per a copy of the Certificate of Death annexed to the Affidavit and marked "JNN1". That he, the deponent, filed Succession Cause No. 144 of 2007 in respect of the estate of the deceased and was issued with a Grant of Letters of Administration Intestate on the 28/08/2007. He also says that this suit involves land and therefore survives the Plaintiff's death and that he (deponent) desires to proceed and prosecute the suit on behalf of the deceased's estate. He prays that the suit, which was abated on 11/03/2007 be revived so that he can continue with the suit. He explains that the reason for the delay was his being far away from the locus of the suit land and further that there was a delay in his being issued with a letter by the local chief to enable him apply for the Grant of Letters of Administration Intestate. The deponent also explains that his mother died some six months before his father but he had no evidence to offer to support this allegation. The deponent says that he has two brothers and a sister who live in Burnt Forest while he himself works in Kirinyaga District.

3. The hearing notice for the application was duly served upon all the Defendants/Respondents herein but none of them appeared during the hearing of the application on the 16/07/2009. Mr. Mindo for Mindo & Company Advocates argued the application exparte.

4. Rule 8 Order XXIII of the Civil Procedure Rules provide as follows:-

"8(1) Where a suit abates or is dismissed under this Order, no fresh suit shall be brought on the same cause of action.

(2) The Plaintiff or the person claiming to be the legal representative of a deceased Plaintiff or the trustee or official receiver in the case of a bankrupt Plaintiff may apply for an order to revive a suit which has abated or to set aside an order of dismissal, and, if it is proved that he was prevented by any sufficient cause from continuing with the suit, the court shall revive the suit or set aside such dismissal upon such terms as to costs or otherwise as it thinks fit.

4. I have considered the application which is not contested. I have considered the reasons given by the Applicant for the delay in proceeding with this matter and note that the Applicant filed the application nearly four months after obtaining the Grant of Letters of Administration. He says that it is the nature of his work that prevented him from taking action earlier.

5. In the circumstances, I allow the Applicant's application dated 7/12/2007 and order that this suit which had abated be and is hereby revived. The Applicant shall proceed speedily to fix the case for hearing within the next twelve months from the date hereof failing which the suit shall abate. Costs of this application shall be in the cause.

It is so ordered.

Dated and delivered at Nairobi this 6th day of November, 2009.

R.N. SITATI

JUDGE

Delivered in the presence of:-

Mr. Mindo (present) for the Plaintiff

No appearance for the Defendant

Weche- court clerk