



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

**Civil Appeal 59B of 1998**

**NDAMBO NGUNGU ..... APPELLANT**

*versus*

**BERNARD GITAU NGUNGU ..... RESPONDENT**

**RULING**

The Chamber Summons dated 13<sup>th</sup> August 2007 when it came up for hearing on 28<sup>th</sup> January 2008 although the Respondent had been served there was no attendance on her behalf. That Chamber Summons seeks for the revival of this suit which abated after the death of the Plaintiff and further seeks that Esther Wanjiku Ndambo be appointed the legal representative of the original Plaintiff. In the affidavit in support of the application the Applicant stated that there was delay in making the present application which she attributed to delay experienced in getting the chief's letter for purpose of administration cause and also due to a lack of fees for purposes of moving the court.

**Order XXIII Rule 3(3)** provides that where there is no application within one year for a legal representative to be made a party to a suit on behalf of a plaintiff and where the cause of action does not survive the death of the plaintiff or where the plaintiff is the sole plaintiff in the suit, such a suit abates. The present case the deceased Plaintiff was a sole Plaintiff. After his death on 25<sup>th</sup> of February, 1999 there was no application made for the appointment of another plaintiff within a year. Accordingly the suit abated on 25<sup>th</sup> February 2000. **Order XXIII Rule 8(2)** provides that the court can revive such a suit if the applicant does prove that he was prevented by sufficient cause from continuing with the suit. The applicant's contention is that she did not have the legal fees to enable her make the necessary application for her appointment as a plaintiff. The court has considered the reasons given by the applicant in delaying to make that application and in the court's view the reasons given are sufficient cause for a failure to do so. The court does appreciate that lack of legal fees can in some cases be a real challenge in proceeding with legal action. It undoubtedly does hinder some people from approaching the courts to enable them enforce their rights.

Accordingly I grant the following orders:-

- 1. I do hereby order that this suit be revived.**
- 2. The court does hereby appoint Esther Wanjiku Ndambo as the plaintiff in substitution of the original plaintiff Ndambo Ngungu.**
- 3. The costs of the chamber summons dated 13<sup>th</sup> August 2007 shall be in the cause.**

**DATED AND DELIVERED THIS 27<sup>TH</sup> DAY OF FEBRUARY, 2008.**

**MARY KASANGO**

**JUDGE**