

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KISII
CIVIL CASE 280 OF 2002

KASMIL ONDIEKI PLAINTIFF

VERSUS

1. CLERK KISII MUNICIPAL COUNCIL

2. ANDREW N. ONGUTI..... DEFENDANT

RULING

The plaintiff filed an application dated 6th March, 2007 pursuant to the provisions of Order XXIII rules 2 and 4 of the Civil Procedure Rules. He prayed that an entry be made on the record to the effect that the cause of action continues against the surviving defendant, the first defendant, the second defendant having died on 8th June, 2004.

The plaintiff had sued the defendants for allegedly interfering with his property known as DARAJA MBILI/PLOT 15. The plaintiff's case had been closed at the time of the second defendant's demise. Since then, no grant of representation had been applied for by any one. It is not in dispute that the plaintiff's cause of action against the first defendant is still subsisting despite the demise of the second defendant. The plaintiff's application was not opposed. I grant the orders as sought. There will be no order as to costs.

DATED, SIGNED and DELIVERED at KISII this 23rd day of April, 2008.

D. MUSINGA

JUDGE.

Delivered in open court in the presence of

Mr. Ombachi for the plaintiff

N/A for the defendant

D. MUSINGA

JUDGE