



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

**Misc. 36 of 2005**

**NGARI NDEGENYE.....PLAINTIFF**

**VERSUS**

**CHARLES GITHINJI.....1<sup>ST</sup> DEFENDANT**

**ATTORNEY GENERAL.....2<sup>ND</sup> DEFENDANT**

**RULING**

Chamber Summons dated the 10<sup>th</sup> day of July 2007 and amended on 28/1/2008 seeks to substitute a deceased Respondent in this Judicial Review matter. He holds a grant of letters of Administration in the estate of deceased Respondent. The applicant is the son of the deceased party. The death occurred on 12/7/2005. The Preliminary Objection raised by counsel is that the party to be substituted for died more than 12 months in fact he died more than 3 years past. Order 23 Civil Procedure Code 4 (3) provides for the time within which an application may be made failing which the suit as against abates. The applicant has invoked the said order 23 rule 4 (1) Civil Procedure Code empowers the court to cause the legal representative of the deceased to be made a party and shall proceed with the suit Rule 4 (3) provides where no application is made within one year the suit shall abate.

I uphold the Preliminary Objection and declare that suit has abated against this Respondent but it may proceed with the 2<sup>nd</sup> Respondent who is alive.

Application is dismissed.

Dated this 9<sup>th</sup> May, 2008.

**J. N. KHAMINWA**

**JUDGE**

**9/5/2008**

**9/5/2008**

**Khaminwa – Judge**

**Njue- Clerk**

**Mr. Rukwaro HB for Wairimu**

**N/A for Muraguri**

Read in open court.

**J. N. KHAMINWA**

**JUDGE**