

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NYERI

Civil Case 25 of 1986

KATHU KAMEME PETER PLAINTIFF

Versus

FREDRICK KIGO MBOGO DEFENDANT

RULING

The application dated 14th March 2008 is brought by Faith Wambui Ngari. By that application the applicant seeks that she be substituted in place of the defendant Fredrick Kigo Mbogo deceased. The defendant died on 19th December 1998. The applicant obtained grant over this estate. She therefore sought orders as prayed.

The application was opposed. The opposition raised by counsel for the plaintiff was difficult to follow and amounted to evidence being given from the bar. It was difficult to follow how an advocate who said she appeared for the plaintiff could then submit that that plaintiff is deceased. If that is correct since the court has no way of confirming the same, then that advocate does not have instructions because she cannot, after all be instructed by a deceased client. The other submissions in opposition which amounted to counsel giving evidence from the bar was that this case had been the subject of an appeal and substitution could not therefore be ordered. Counsel did also argue that the suit had abated and therefore substitution could not be ordered. It is correct that the defendant passed away in 1998. It is also correct that the suit has abated. The court however does have power to revive a suit that has abated. Accordingly I do hereby order that the suit as against the defendant Fredrick Kigo Mbogo deceased be and is hereby revived. Further I do grant the order that Faith Wambui Ngari be and is hereby substituted in place of Fredrick Kigo Mbogo deceased. There shall be no orders as to costs in respect of the chamber summons dated 14th March 2008.

DATED AND DELIVERED THIS 26TH DAY OF JUNE 2008.

MARY KASANGO

JUDGE