



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
OF KISII**

Succession Case 124 of 2007

**IN THE MATTER OF THE ESTATE OF LABAN MOGIRE MOGOGO
..... DECEASED**

AND

PETER MANONO MOGIRE APPLICANT

VERSUS

JEMIMA MOKEIRA MOGIRE OBJECTOR

RULING

The petitioner filed an application under Section 47 of the Law of Succession Act urging the court to order that the objection proceedings commenced by the objector on 30th October, 2007 had abated because the objector died on 8th January, 2008.

It is trite law that the death of a plaintiff or a defendant or such other party to a suit does not automatically cause the suit to abate if the cause of action survives or continues. The objector was the widow of the deceased. According to the documents on record, there are three surviving sons of the deceased, the petitioner included. The objector's claim was as follows:

- (a) That she was not cited in the application of the grant.
- (b) That being the widow of the deceased, Laban Mogire Mogoro, she was the next in line to succeed the deceased.
- (c) That she had not consented to the application of the grant by the petitioner.
- (d) That she wanted to be given the opportunity to distribute the deceased's estate.

(e) That she needed to get a share of the parcel of land that the deceased had left for himself after distributing the rest amongst his children, “*Emonga*”, so that she could sustain herself until she dies.

However, a legal representative of the objector can still make an application to be made a party to this succession cause and show that the objection ought to be allowed to continue. The objector died less than one year from the date of filing the application. But as earlier stated, it is doubtful if the objection can still be sustained.

In the circumstances, I order that the other two sons of the deceased, James O. Mogire and Meshack O. Mogire, to file affidavits within thirty (30) days from the date hereof and indicate whether they consent or oppose the petitioner’s application. Thereafter the court will make a final determination.

The matter will be mentioned on 11th July, 2008 at 9.00 a.m. for further orders.

DATED, SIGNED and DELIVERED at KISII this 9th day of June, 2008.

D. MUSINGA

JUDGE.

Delivered in open court in the presence of:

Applicant in person

D. MUSINGA

JUDGE.