



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

**Civil Case 134 of 1993**

**JOHN NJOROGI KARIUKI ..... PLAINTIFF**

*Versus*

**LUCAS MUCHORI MACHARIA ..... 1<sup>ST</sup> DEFENDANT**

**DOMINIC MBUGUA GATHIA ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

The application before court is a Chamber Summons dated 27<sup>th</sup> September 2007. It is brought under Order XXIII Rules 12, 8(2) and 3(1) of the Civil Procedure Rules. The application seeks for reinstatement of this suit which abated by operation of law on or before 2<sup>nd</sup> October 2006. The defendants although served failed to attend court at the hearing and also did not file any documents in opposition. The affidavit in support of the application stated that the application is brought by the wife and son of the deceased plaintiff. The deceased plaintiff passed away on 2<sup>nd</sup> October 2005. Before his death the said plaintiff had filed this case seeking to recover land being land reference No. *Nyandarua/ol Joro-orok Salient/ 3328*. The son of the deceased plaintiff Peter Njoroge Kariuki one of the applicants herein filed a succession cause at High Court Nakuru being Succession Cause No. 553 of 2006. He was issued with Letters of Administration on 1<sup>st</sup> December 2006. That he and his co-applicant did not file this application immediately the grant was issued because they had not finalized the collection of the properties of the estate and had not identified the shares of the dependants. They were finally able to file this application on 24<sup>th</sup> August 2007. The applicant further deponed that the deceased plaintiff had not lost interest in this case even up to his death. That the deceased plaintiff's advocate had previously made several attempts to fix this case for hearing but due to the congestion of the court diary the case was not fixed for hearing. Bearing in mind the applicants deposition as herein before and in view of the fact that the application is not opposed I find that the application is merited. The order of this court is that this suit be and hereby reinstated. Further the court does hereby substitute the names of Joyce Wangari Kariuki and Peter Njoroge Kariuki as the plaintiffs in place of John Njoroge Kariuki deceased. There shall be no orders to costs in respect of chamber summon dated 27<sup>th</sup> October 2007.

**MARY KASANGO**

**JUDGE**

*Dated and delivered at Nyeri this 27<sup>th</sup> day of October 2008.*

**BY**

**M. S. A. MAKHANDIA**

**JUDGE**