

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI (NAIROBI LAW COURTS)

Civil Case 457 of 2005

1. MARIA NJERI KARIUKI

2. HANNAH WANJIKU KIRIPLAINTIFFS

V E R S U S

PAULINA GACHAMBI KARIUKIDEFENDANT

R U L I N G

This is an application (by chamber summons dated 21st July, 2005) brought under Order 23, rules 3(1) and 8(2) of the Civil Procedure Rules (the Rules). It seeks orders for revival of the 2nd Plaintiff's suit which has abated, and for substitution of the Applicant, MARIA NJERI KARIUKI, in place of the deceased 2nd Plaintiff, HANNAH WANJIKU KIRI. The application is supported by the affidavit of the Applicant.

The application is unopposed in that no papers have been filed in response thereto despite service. I have read the supporting affidavit and also given due consideration to the submissions of the learned counsel for the Applicant.

The 2nd Plaintiff having died on 22nd August 2006 and there being no application for substitution within one year of that date, the 2nd Plaintiff's suit abated. The Applicant is the legal representative of the deceased 2nd Plaintiff as she has a grant of representation in that behalf duly issued by a competent court. To succeed in this application she must prove that she was prevented by a sufficient cause from continuing the suit.

The Applicant has deponed that she was prevented from timeously applying for a grant of representation by the demands of her corrupt local chief who wanted to be bribed in order to issue a letter that is normally required by the court when one is seeking a grant of representation. I believe the Applicant. She has therefore proved on balance that she was prevented by a sufficient cause from continuing with suit. The court is thus duty bound to revive the 2nd Plaintiff's suit, and it is hereby revived. The Applicant is also hereby substituted in place of the deceased 2nd Plaintiff. Costs of this application shall be in the cause. It is so ordered.

DATED AT NAIROBI THIS 17TH DAY, OF NOVEMBER, 2008

H. P. G. WAWERU

J U D G E

DELIVERED THIS 21ST DAY OF NOVEMBER, 2008