

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT ELDORET

CIVIL SUIT 135 OF 2004

SAMWEL KAHU MUNYUA.....PLAINTIFF

VERSUS

KENYA COMMERCIAL BANK LTD:.....DEFENDANT

RULING

Before me is an application under order XXIII Rules 3 and 12 of CPR seeking the court to declare the suit by the plaintiff to have abated. It was deponed by DELMAS MWINAMO the counsel for the defendant that the plaintiff in this suit SAMUEL KAHU MUNYUA passed away. He has annexed a copy of a death certificate which indeed confirms that the plaintiff died on 10th March 2005 at Thika district Hospital due to severe pneumonia. Since then there has been no applicants to substitute the deceased plaintiff. Order 23 rule 3(1) CPR provides that where a party dies and cause of action survives an application can be made to cause the legal representative of the deceased plaintiff or defendant to be made a party and the suit to proceed. Sub rule 2 of the said rule provides that where there is no application is made for substitution within one year the suit shall abate. Clearly since 10th March 2005 when the plaintiff died is more than one year and there has been no application for substitution.

In the circumstances I find the application before me is proper and I grant the same. I declare the suit to have abated. The defendant will have costs of the suit to be paid from the estate of the deceased.

DATED AND DELIVERED AT ELDORET ON 19TH APRIL 2007.

KABURU BAUNI

JUDGE