

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
Civil Suit 528 of 1998

LAWI DUDA

ABDULAZIZ AL-KITHIRI AND 20 OTHERSPLAINTIFFS

V E R S U S

BAMBURI CEMENT LIMITED DEFENDANT

R U L I N G

The sixth plaintiff, Harold Kenneth Temo Chambe, died on the 12th February 2004. His claim in this suit therefore abated on 11th February 2005. But the court has jurisdiction, for good cause, to revive it. The deceased's widow, Edith Ferah Temo, was granted a limited grant of letters of administration on 18th August 2004 and instead of applying to be substituted soon thereafter, she made that application on 10th June 2005. At that time an application for substitution was untenable, as the claim had already abated. She was therefore forced to withdraw that application and has now applied for revival and substitution. The defendant says the widow has been indolent and her application should therefore be dismissed.

Having considered the matter I find that the widow was minded of being substituted in place of her late husband and that is why she obtained a limited grant of letters of administration long before the claim abated. It appears to me that it is a result of her advocates' blunders that the application was not made in time. Even when they came round to making one they made a wrong one and were forced to withdraw it.

In the circumstances counsel's mistakes cannot be blamed on the widow and in exercise of my discretion I allow this application as prayed. The Applicant shall however pay the defendant's costs of this application and those of the earlier one, which was withdrawn.

DATED and delivered this 12th day of July 2007.

D.K. MARAGA

JUDGE