

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT ELDORET
Civil Appeal 53 of 2003

GURCHARAN DASS AGGARWALA.....APPELLANT

VERSUS

AJAY VRAJLAL VAITHA.....RESPONDENT

RULING

This is an application made under the provisions of Order 23, Rules 4, 8 and 12 and Order 1, Rule 10 of the Civil Procedure Rules. The Applicant seeks the following orders:-

1. That the appeal herein be revived.
2. That KAMLA DEV AGGARWAL and AMIT AGGARWAL being the Personal representatives of the Appellant are substituted in the place of the deceased Appellant and the Memorandum of Appeal amended accordingly.
3. That costs be in the cause.

The Appellant passed away on 23rd August, 2005 and the appeal abated on 23rd August 2006. The Applicant in the meantime proceeded to obtain Limited Grant of Letters of Administration on 7th December, 2006 vide Miscellaneous Succession Cause No. 696 of 2006.

The Respondent opposes the application stating that the applicants are guilty of inordinate delay in making the application. They claim that the Respondent has already filed an application in the instant Appeal seeking the release of the security deposited on the grounds that the appeal has abated and the instant application is intended to frustrate the said application.

I have considered the application, the affidavits and submissions by Counsel.

The Applicant took one year and four months to obtain the limited grant. They immediately thereafter filed the application after the December holidays. The said period was long and indeed there was delay. However, the delay was not wholly inordinate and inexcusable considering the vagaries of Court processes.

In the interest of justice and hearing of the appeal on the merits, it would be fair and reasonable to allow the application for the personal representatives of the deceased to be substituted in the appeal with Appellants.

There would be no substantial prejudice to the Respondent and he can be compensated in costs. The Security is also still held through Orders of the Court.

I therefore do firstly grant prayer 2 of the Application. Is this Court able to revive the appeal and must another application be made?

I think that there is nothing in law to prevent this Court from considering an application for substitution and revival of suits at the same time and in the same application. There is no prejudice also in such events.

I therefore do hereby grant prayer 1 and order the appeal and is hereby revived.

Applicants shall pay the costs of this application to the Respondent.

DATED AND DELIVERED AT ELDORET THIS 30TH DAY OF NOVEMBER, 2007.

M.K. IBRAHIM,

JUDGE.