



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

**AT KAKAMEGA**

**Civil Case 61B of 1999**

**EVANSON LABOSO**

**JOHANA**

**KIPCHUMBA.....PLAINTIFF**

**V E R S U S**

**KASSAMALI MULJI**

**GILANI .....DEFENDANT**

**R U L I N G**

The Ruling is on the application by Chamber Summons dated 28.7.05 by Wilbay Ltd., described as the Interested Party. The said application sought an order that the suit has abated as against the 1<sup>st</sup> Defendant because the latter died way back in the year 2000 and no personal representative was been placed on record. The application was not opposed by the plaintiff who was served, vide the affidavit of service sworn on 28.11.05 by Rodgers C. Fundi, a process server.

As the allegations made in the application and in particular the supporting affidavit sworn by I. S. Kuloba, an advocate, have not been contraverted, the 1<sup>st</sup> Defendant having died in the year 2002 and no step having been taken since to place the legal representative in the suit in place of the 1<sup>st</sup> Defendant, the suit had, by virtue of Rules 3 (2) of Order XXIII of the Civil Procedure Rules abated as against the 1<sup>st</sup> Defendant.

Accordingly, I allow the application and order that the suit herein has abated as against the 1<sup>st</sup> Defendant. Costs of the application shall be in the cause.

Dated at Kakamega this 24<sup>th</sup> day of February 2006

**G. B. M. KARIUKI**

**J U D G E**