

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NYERI
Civil Case 35 of 1987

PATRICK THEURI ACHIURI.....APPLICANT/PLAINTIFF

WACHIRA THEURI (DECEASED)

Versus

WASHINGTON NDEGWA WANJOHI.....DEFENDANT/RESPONDENT

RULING

I have carefully considered what was brought before me during the hearing of these two applications, namely Chamber summons dated 28 March 2005 filed by Washington Ndegwa Wanjohi and Chamber Summons dated 13th September 2005 filed by Patrick Theuri Wachiuri. The former wants orders making this case abated and is brought under order XXIII Rule 1 of the Civil Procedure Rules while the later seeks an order to substitute Patrick Theuri Wachiuri in the place of the deceased Plaintiff Wachiuri Theuri.

Order XXIII Rule I does not say much on the issue of abatement and Mr. Kiminda, counsel for the Applicant in Chamber Summons dated 28th March, 2005 did not add much. I should have said that the two applications were by consent consolidated for hearing and I did hear both of them together.

In the Chamber Summons dated 13th September, 2005, the interest and determination shown by the Applicant cannot be overlooked. He was a prisoner in prison yet managed to file his papers not only in this suit but also in a succession cause. He is now outside Prison custody and gives the impression that he is a person who is keen to move court proceedings. I think he deserves to be given the opportunity to do so hoping he will not relax

That being the position, the Defendant's Chamber Summons dated 28th March, 2005 is hereby dismissed and Patrick Theuri Wachiuri's Chamber Summons dated 13th September 2005 granted as prayed. Costs of each application be costs in the cause.

Dated this 15th day of June, 2006.

J. M. KHAMONI

JUDGE