



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT EMBU

Civil Case 49 of 2002

KANJA RWARIO1ST PLAINTIFF

JUSTIN MURIMI.....2ND PLAINTIFF

NGIMA GACHANJA.....3RD PLAINTIFF

WAKINI MUCHIRI KARUIRU.....4TH PLAINTIFF

SARAH WAIRIMU KANGI.....5TH PLAINTIFF

VERSUS

PERIS NJERI WANJOHI.....DEFENDANT

RULING

Application dated 20/4/2006 seeks to revive suit by the legal representative of first plaintiff against the defendant. The grounds are set out on the application. The first plaintiff died on 12/4/2005. The deceased plaintiff was survived by the applicant who has taken out a grant as personal representative of the deceased. That the cause of action survives the death of the plaintiff that the letters of administration were delayed.

The application is also supported by affidavit of the applicant. The plaint is in respect of partnership dealings between the plaintiff and the defendant. The prayers are for a declaration that plot No. 10 Kiangai Market is a partnership plot between the plaintiffs and the defendant and 5/6 shares should be transferred to the plaintiffs payment of mesne profits and interest thereon. There is no doubt the cause of action survives the death of the first plaintiff and other plaintiffs. The issue now is whether the applicant can revive the suit and substitute herself in place of her father.

Order 23 CPC deals with consequences of death of party. Section 3 (1) provides that an application may be made to make a party the legal representative of the deceased. However 3 (2) the application has to be made within one year failing which the suit shall abate.

In this case death occurred on 12/4/2005 and Limited Grant to pursue this case was issued on 9/3/2006 just before the expiration of the one year Rule 8 (2) empowers the court on application to revive the suit after one year if it is proved that the delay was caused by sufficient cause. In this case the delay is not inordinate and it is explained. The cause of action survives the death being a partnership claim.

I therefore find that the applicant has proved that the application was delayed by sufficient cause.

I allow the application and grant orders as prayed. However the costs of this application shall be paid to the Respondent.

Dated on this 4th August, 2006.

J. N. KHAMINWA

JUDGE

4/8/2006

Khaminwa -Judge

Njue -Clerk

Ms Wairimu for Magee and Magee

Mr. Okwaro H/B for Kinyua Kiama

Ruling read in open court in their presence