



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**CIVIL CASE 479 OF 2000**

FRANCIS MBUGUA KIARIE.....PLAINTIFF  
VERSUS  
PETER THARAO KIARIE.....DEFENDANT

**JUDGMENT**

The applicant by way of this Chamber Summons brought under Order XXIII Rule 3 (1) 8 (2) of the Civil Procedure Rules and Section 3A of the Civil Procedure Act (Cap 21) seeks orders that the suit which abated after the death of the plaintiff be revived and the applicant SARAH NJAMBI MBUGUA be substituted as the plaintiff in the suit.

Order XXIII Rule 3(2) provides that where within one year no application is made to cause a legal representative of the deceased plaintiff to be made a party to continue with the suit, the suit shall abate so far as the deceased plaintiff is concerned.

The plaintiff died on 4th February 2001. It is now over one year and the suit has abated. Where a suit abates under this order, no fresh suit shall be brought on the same cause of action but under Order XXIII Rule 8 (2) Civil Procedure Rule a legal representative of the deceased person may apply for an order to revive a suit which has abated if it is proved that he was prevented by any sufficient cause from continuing with the suit.

In the present case the applicant had applied for grant of probate on 2<sup>nd</sup> July 2002 but the suit abated on 4th June 2002 before the letters of administration were granted to the applicant and hence she had not been substituted. The applicant has shown sufficient cause which prevented her from continuing with the suit after the death of her husband and I do order that the suit be and is hereby revived.

The defendant is awarded the costs of this application. It is so ordered.

**Dated and delivered at Nairobi this 12th day of May 2005.**

**J.L.A. OSIEMO**  
**JUDGE**