



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)**

Civil Case 1702 of 1976

**NJOROGE NJUGUNA
PLAINTIFF**

-versus-

**1. RUTH WANJIKU KAMAU 1ST
DEFENDANT**

**2. LAND REGISTRAR KIAMBU 2ND
DEFENDANT**

**3. MUCHAI KARU 3RD
DEFENDANT**

**4. CYRUS KOMU CHEGE 4TH
DEFENDANT**

R U L I N G

In the Chamber Summons application dated the 15th July 2004 and filed on the 20th July 2004 the First Defendant has moved the court for orders that all the suits herein be struck out as they have abated. The application is premised on the grounds set out therein and supported by the affidavit of the Applicant, Ruth Wanjiku Kamau, made on the 15th July 2004.

At the hearing of the application before me on the 21st October 2004, Mr. Oonge, learned counsel for the Applicant, urged that the suit, as consolidated, be struck out as all the Plaintiffs have died and no orders for substitution have been made. The application was supported by Messrs. Charagu and Kinga for the Third and Fourth Defendants respectively.

In his reply, Mr. Njoroge for the Plaintiff, in opposing the application on the grounds filed on the 18th August 2004, contended that there are, in fact, orders in place for substitution of the deceased Plaintiffs made by Githinji J (as His Lordship then was) in or about August 2002.

As Mr. Njoroge was unable to produce such orders, the hearing was adjourned to the 22nd October 2004 to enable counsel verify the same from his records.

On the 22nd October 2004 and in the absence of the other counsel who did not appear, Mr. Njoroge referred me to an application dated the 16th August 2002 seeking leave to substitute the Plaintiffs in the

consolidated suit which application, I was informed, was heard and orders made accordingly.

I reserved this Ruling to the 29th October 2004.

Having perused the court record, I am extremely disappointed, to say the very least, that counsel did not disclose to me that the issues raised in the application dated the 15th July 2004 had already been canvassed before and resolved by Ojwang, Ag. J. on the 26th January 2004 when the hearing of the consolidated suit commenced before His Lordship leading to the learned judge's order that:

" This part heard case should be listed for further hearing on 22nd March, 2004,"

On the 22nd March 2004, His Lordship issued further directions as to the hearing of the suit and at a subsequent mention on the 20th May 2004 ordered that-

"This matter be mentioned before the Duty Judge at 2.30 p.m. on 6/7/2004 for the purpose of ascertaining the status of the documents filed, the exchange of documents, the notices of appointment, and for the giving of directions for trial."

I reiterated this order at a mention before me on the 6th July 2004 and rather than complying with the same, the First Defendant elected to file the frivolous application the subject of this Ruling.

For the foregoing reasons, the Chamber Summons application dated the 15th July 2004 does not lie and it is ordered that the same be and is hereby dismissed with costs to the Plaintiff. It is further ordered that the parties do comply with the orders made by Ojwang', Ag. J on the 20th May 2004 within the next fourteen (14) days hereof.

Dated and delivered at Nairobi this Twenty-ninth day of October 2004,

P. Kihara Kariuki

Ag. Judge