



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CIVIL CASE NO.1458 OF 1977**

**ANNA NGUNJU .....PLAINTIFF**

**V E R S U S**

**NJOGU NGUVU .....DEFENDANT**

**R U L I N G**

This is an application by way of Chamber Summons dated 1st October 2001 made under Section 3A of the Civil Procedure Act and Orders 23 rr 1 & 3 (1) and Order 39 r1 of the Civil Procedure Rules asking that applicant be substituted instead of the deceased plaintiff. That beneficiaries be allowed to reside in the suit premises, that the respondent be restrained from evicting or interfering with the applicant and the beneficiaries pending the hearing and determination. Supporting affidavit dated 1st October 2001 by Francis Wachira Murage says that he holds grant of administration of the Estate of the plaintiff and should be substituted.

He says that he lives in the same premises with two sisters and that defendant seeks to evict them against the injunctive order on 26th October 1983 of this court. In reply the defendant by affidavit dated 8th March 2000 says that the applicant is a stranger to the case and that the named sisters and the applicants are not beneficiaries. That the applicant is a grandson of the deceased but had lived with his mother away from the estate.

I have heard both counsel Mr. Nguru and Mr. Ongway for applicant and respondent respectively and I think there should be no dispute that Francis Wachira Murage has obtained letters of administration. There ought to have been application to substitute the legal representative within 1 year from 15th April 2001. This should have been done under Order 23 r 1&2 and if not done the suit abated on 16th April 2002. If that be the position then these orders cannot be issued in the case. I therefore dismiss this application for being incompetent.

Delivered on 30th day of January 2003.

**A. I. HAYANGA**

**J U D G E**

Read to Mr. Maina holding brief for Mr. Nguru

**A. I. HAYANGA**

**J U D G E**