



**REPUBLIC OF KENYA**

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

**HIGH COURT CIVIL CASE NO. 165 OF 1993**

**APUFIA WANGARI MURAGURI ..... PLAINTIFF**

**VERSUS**

**DAVID WANJOHI MURAGURI ..... DEFENDANT**

**R U L I N G**

By an application dated 2nd December 2002 Nephat Muchiri Wagachau hereinafter referred to as the Applicant seeks extension of time for filing of his prayer to be substituted in place of the plaintiff Apufia Wangari Muraguri who is said to have died on 13th February 1992. No application for substitution having been made within one year the suit has abated hence the need for leave. The Applicant has obtained letters of administration ad colligenda bona to the estate of the plaintiff for purpose of prosecuting this suit.

The application is strongly opposed on the ground that there has been inordinate delay in bringing it which delay has not been

explained. It is also contended that the suit is incompetent the same having been filed in 1993 after the death of the deceased plaintiff. Finally it is submitted that the Defendant died on 24/6/2001 and no substitution having been made the suit cannot continue.

On the competence of this suit it is apparent from the court record that the plaintiff filed the suit in the lower court in 1989 as Nyahururu SRMCC 362 of 1989. By an order made by Hon. Tunoi J. (as he then was) on 29th January 1992, this suit was transferred to this court and registered as HCCC 165 of 1993. It is not therefore correct that the suit was filed in 1993. On the delay in bringing this application, it is evident that an attempt was made within reasonable time to have the Applicant substituted but the application hit a snag as the Applicant had not yet obtained letters of administration. The claim herein involves land and it is only fair that this court exercises its discretion in the Applicants favour so that the court can be able to properly arbitrate on the matter.

I have noted the objection that was raised earlier that the Applicant may not be the appropriate person to be substituted in place of the plaintiff however in view of the letters of administration already granted to the applicant. He is the appropriate person to be substituted.

On the fact that the Defendant is deceased, action can only be taken in this regard after this application is dealt with only then can the plaintiff be able to move with regard to substitution of the Defendant (i.e. if there is no move from the defence side). For all the aforesaid reasons I find that it is only fair and just that I do exercise my discretion in the applicant's favour. The application is accordingly granted and leave issued as prayed. Costs in the cause. Orders accordingly,

**Dated signed and delivered at Nyeri this 5th day of December 2003.**

**H. M. OKWENGU**

**JUDGE**

