

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
CIVIL APPEAL NO.55 OF 1994

MUSA IBRAHIM OSMAN APPELLANT

VERSUS

LEILA KHAMIS SHIKELY RESPONDENT

R U L I N G

In this appeal the Appellant is said to have died on 9th November, 1999. Amina Musa Ibrahim, his widow has made an application dated 14th May, 2001 that she may be joined as an appellant in place of her deceased husband in order to proceed with the appeal. The Applicant states that at all times she was residing with her husband in the premises and she continues to reside in the premises after his death. Under the provisions of Rent Restriction Act Cap 296 the definition of tenant includes “the widow of a tenant who was residing with him at the time of his death.

This application is made under Order 23 Civil Procedure Rules which permits a personal representative to be joined as a party where the cause of action survives the deceased. In this case the authority to take over the tenancy of the deceased is given by the Rent Restriction Act Cap 296. This act does not require a personal representative to take over the tenancy. The Act simply specifies the categories of persons who are to be treated as tenants and in whom the interest in the tenancy shall devolve in the event of the tenant dying. The act does not contemplate the situation where the estate of the deceased tenant takes over the tenancy. The act protects the occupants of the premises.

It is my view therefore that the widow of the appellant is entitled to be joined as a party to this appeal and to proceed with appeal in place of her deceased husband. No grant of representation is required as she is pursuing her personal interest which do not fall as part of the estate of her deceased husband. The provisions of Order 23 Civil Procedure Code as to abatement of suit does not arise. I therefore grant orders as prayed in the application dated the 14th May, 2001 with costs to the applicant.

Dated at Mombasa this 4th Day of February, 2002.

J. KHAMIMINWA

COMMISSIONER OF ASSIZE

Read in the presence of: Mr. Khatib and Ms. Kasmani.

J. KHAMINWA

COMMISSIONER OF ASSIZE