



**Ibdirahim (Suing as the legal representative of the Estate of Sharrif Ibrahim) v Abdirahim
(Environment & Land Case E004 of 2021) [2024] KEELC 5098 (KLR) (1 July 2024) (Ruling)**

Neutral citation: [2024] KEELC 5098 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ISIOLO
ENVIRONMENT & LAND CASE E004 OF 2021**

PM NJOROGE, J

JULY 1, 2024

BETWEEN

**HUSSEIN SHARRIF IBDIRAHIM(SUING AS THE LEGAL REPRESENTATIVE
OF THE ESTATE OF SHARRIF IBRAHIM) PLAINTIFF**

AND

ABDUKADIR SHARRIF ABDIRAHIM DEFENDANT

RULING

1. This application states on its face that it has been brought to court under Order 1 Rule 10(2) and 22, Order 17 Rule 2, Order 12 Rule 7, Order 5 Rule 17 and Order 51 Rule 1 of the Civil Procedure Rules 2010 and Section 3 A of the Civil Procedure Act and “all other enabling provisions of the law”.
2. The application seeks orders that;
 1. This Honourable Court be pleased to certify the matter urgent.
 2. This Honourable Court be pleased to set aside and/or vary the dismissal orders for non-attendance delivered on the 8/5/2023 by Hon. Justice P.M Njoroge in Isiolo ELC No. 004 of 2021.
 3. This Honourable Court be pleased to appoint DAHIR SHARIFF ABDIKADIR as the legal representative of the deceased herein ABDIKADIR SHARIFF ABDIRAHIM and substitution proceedings be allowed to enable him finalize this matter to conclusion.
 4. Cost and interest of the application be provided for.
3. The application is supported by the affidavit of DAHIR SHARIFF ABDIRAHIM and has the following grounds;



- a. The applicant is the eldest son of the deceased ABDIKADIR SHARIFF ABDIRAHIM who died on 28/11/2022.
 - b. Prior to his demise the deceased was the defendant in the above matter.
 - c. The applicant applied and was granted limited grant of letters of administration ad litem for the purposes of prosecuting these proceedings only on 29/12/2023 in Isiolo Kadhis Court Misc. Succession No. E0003 of 2023.
 - d. The applicant's Advocate on record upon visiting Isiolo Court Registry to file an application for substitution proceedings, he was informed that the matter had been dismissed for non-attendance BOTH PARTIES vide a ruling delivered on the 8/5/2023 by Hon. Justice P. M Njoroge.
 - e. The applicant is keen on prosecuting this part heard matter to finality.
 - f. That due to the nature of this case and in the interest of justice and promptitude there is need to reinstate and institute substitution proceedings in regard to the above mentioned ELC Case and appoint the applicant DAHIR SHARIFF ABDIKADIR to enable him to proceed with this suit on behalf of the estate of the deceased.
 - g. There is no prejudice or harm that might be occasioned by the applicant being appointed as the legal representative of the estate of the deceased.
4. On 8/4/2024 the parties were directed to file written submissions. However, on 25/5/2024 Advocate Caleb Mwiti who was holding brief for Advocate Otieno C for the applicant informed the court that the Respondent had not filed any response. He said that on account of this, this application stood unopposed. He prayed that the application be allowed.
5. I find that the application is not opposed. I also opine that allowing the application will be in the interest of justice for the suit to be heard on its full merits. In arriving at this decision, this court subscribe to the maxim "Ubi Jus Ibi Remedium" as enunciated in the centuries Old English Case of Ashby Versus White (1703) 92 ER 126. Indeed, "Where there is a right, there is a remedy"!
6. In the circumstances, this court issues the following orders:
- a. This application is allowed.
 - b. Costs shall be in the cause.
 - c. The parties will come to court for directions on 7/10/2024.
 - d. The applicant is directed to serve the orders issued by the court today upon the respondent within 7 days of delivery of this ruling.

DELIVERED IN OPEN COURT AT ISIOLO THIS 1ST DAY OF JULY, 2024 IN THE PRESENCE OF:

Court Assistant: Balozi/Rahma

Parties not in court.

HON. JUSTICE P.M NJOROGE

JUDGE

