

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAROK

ELC CAUSE NO. 589 OF 2017

FORMERLY NAIROBI CC NO. 1549 OF 1998

PARMERES OLE KIOLEL.....PLAINTIFF

-VERSUS-

MOROSHO GROUP RANCH &12 OTHERS.....DEFENDANTS

RULING

By a Notice of Motion dated 18th February, 2015 the Defendants/Respondents sought for orders that the Plaintiff's suit against the defendants has abated and that Judgement be entered against the Plaintiff the Counter Claim and the costs of the suit. The Application was based on the grounds that the sit herein was there about 16 years ago as the delay in proceedings was because the Plaintiff was deceased and further that the Defendants had a water tight case against the Plaintiff by way of a Counter Claim.

The Application was further supported by the Affidavit of the 13th Defendant who averred that she is a widow of the brother of the deceased's Plaintiff and was versed with the matter before the court. She stated that the Plaintiff had died on 17/8/2013 and that the Plaintiff is yet to be substituted and because of the above he states that the case can be allowed.

The Application was opposed by the Plaintiff who stated that even though his father died on 17/8/2013 he was issued with a copy of the Death Certificate on 6/10/17. He further stated that his mother also passed on in 2015 and because of their death, he became responsible for the family and was overwhelmed by responsibilities and could not thus follow up on the case and he thus requested the court in the interest of justice to allow him to apply for letters of administration to enable him defend the suit.

I have considered the Application before me, the Replying Affidavit in opposition to the same and the Submissions made by counsel.

It is the Applicant's contention that the suit herein has abated and the same be dismissed and judgment be entered for the Defendant on the counter claim. The Respondent contends that even though time had lapsed, he could not follow up on the suit as he was overwhelmed by the death of both his parents which happened in quick succession and therefore could not apply for the requisite letters of administration to enable him prosecute the case. Having considered the prayers of the Applicant and the Replying Affidavit and the annexures thereto, I find that this is a suit which in the interest of justice and in exercise of my discretion that I will not allow the Application even though there was lapse of time before the Respondent applied for Substitution. The delay was justifiable for the reasons that the death of both parents to anyone can be devastating and in the circumstances, I will disallow the application to declare the suit as abated.

While the Ruling on this application was pending, the Plaintiff had by a Notice of Motion dated 1/11/2019 sought that he be allowed an extension of time to enable him get letters of administration to enable him prosecute the suit herein. Since this application is related to the previous application, I will allow the application pursuant to the provisions of Articles 159 of the Constitution and take into account that the suit herein being one that relates to land it should be in the interest of justice if each party is given his day in court and in view of the above, I order that the Plaintiff/Applicant do ensure that he obtains the requisite Letters of Administration whether ad litem or confirmed within 60 days from the date of the Ruling and on the issue of costs of both applications, I order that each party shall bear their own costs.

DATED, SIGNED and DELIVERED VIRTUALLY at NAROK on this 12th day of APRIL, 2021.

MOHAMED N. KULLOW

JUDGE

12/4/2021

In the presence of:-

CA:Chuma

Parties and advocates absent