

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MERU

ELC CASE NO. 64 OF 2012 (OS)

PETER KIRIMI J. NGITI.....PLAINTIFF

VERSUS

JOHN IKUNDA M'MWERERIA.....DEFENDANT

RULING

1. Before me is an application dated 14.1.2019 brought pursuant to provisions of order 24 rules 4 (1) and order 51 rules 1, 3 and 4 of the civil procedure rules, 2010, sections 1A, 3A and 63 € of the Civil Procedure Act, Cap 21, Laws of Kenya and Articles 25 (c), 50 (1) and 159 of the constitution of Kenya". The applicant desires that this suit be revived and that one Alice Karambu Mwendwa be enjoined in this case to substitute the deceased defendant.
2. The application is anchored on the grounds on the face of the application and in the affidavit of the applicant.
3. Applicant avers that the case abated upon the death of defendant but applicant has since obtained letters of administration ad litem, which he has availed to this court.
4. I have considered all the arguments raised herein including the submissions of the applicant. I note that the application is unopposed. I also note that applicant has the limited grant in respect of the estate of deceased defendant.
5. Order **24 rule 4 (1) of the Civil Procedure Rules** provide that:

“Where one of two or more defendant’s dies and the cause of action does not survive or continue against the surviving defendant or defendants alone, or a sole defendant or sole surviving defendant dies and the cause of action survives or continues, the court, on an application made in that behalf, shall cause the legal representative of the deceased defendant to be made a party and shall proceed with the suit”.

6. I find that applicant has complied with the aforementioned provisions of law and procedure. In the circumstances the application dated 14.1.2019 is allowed with no orders as to costs.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS 10TH DAY OF JULY, 2019 IN THE PRESENCE OF:-

C/A: Kananu

Muchiri for plaintiff/applicant

HON. LUCY. N. MBUGUA

ELC JUDGE