



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT NAIROBI**

**ELC SUIT NO. 705 OF 2007**

**TERESIA WANGECHI MACHARIA.....1<sup>ST</sup> PLAINTIFF**

**SAMUEL MWANGI MBUGUA.....2<sup>ND</sup> PLAINTIFF**

**MWANGI MACHARIA THIGA.....3<sup>RD</sup> PLAINTIFF**

**VERSUS**

**MBUGUA THIGA.....DEFENDANT**

**RULING**

Mary Wanjiru Mbugua and Ruth Wachuka Wangechi brought the application dated 27/04/2016 seeking to be substituted in place of the 2<sup>nd</sup> Plaintiff, Samuel Mwangi Mbugua who died on 05/12/2014, and to revive the suit. The application was supported by the affidavit of Mary Wanjiru Mbugua who deponed that she is the co-administrator of the Estate of the late Samuel Mwangi Mbugua, the 2<sup>nd</sup> Plaintiff, who was her son. She annexed the limited grant dated 09/12/2015 and deponed that the delay in filing this application for substitution was due to the fact that she was required to amend her petition for limited grant, which took time. She claimed that the limited grant was received by her advocates on 20/04/2016 although it was dated 09/12/2015.

The application was opposed by the grounds of opposition filed by Siriaka Waithira Mbugua who urged that the suit had abated because the substitution of the 2<sup>nd</sup> Plaintiff was not done within one year of his death and that the Applicants did not explain the delay in filing the application.

Parties filed and highlighted submissions in court. The Applicants submitted that the 1<sup>st</sup> Plaintiff died in 2004, the 2<sup>nd</sup> Plaintiff in 2014 and the 3<sup>rd</sup> Plaintiff in July 2018. They urged the court to allow the application as prayed so that the new parties could carry on with the suit.

The Respondent submitted that at the time this application was filed, a year and a half had lapsed since the 2<sup>nd</sup> Plaintiff died, and the suit had abated pursuant to Order 24 Rule 3(2) of the Civil Procedure Rules. It was further submitted that the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Plaintiffs as well as the Defendant have all died, hence no party will be available to testify in the matter.

The court has considered the application, grounds of opposition, submissions by counsel, facts and the law applicable. At the time the Applicants filed this application, the suit had already abated because it had been more than a year since the 2<sup>nd</sup> Plaintiff died and no substitution had been made. The 1<sup>st</sup> Plaintiff died in 2004. It has not been demonstrated that the suit survived the 1<sup>st</sup> Plaintiff's death. The Applicants seek to revive this suit. Order 24 rule 7(2) of the Civil Procedure Rules provides that a person claiming to be a legal representative of a deceased Plaintiff may apply to revive a suit which has abated and the court can grant the order if it is proved that the person was prevented by sufficient cause from continuing the suit. Mary Wanjiru Mbugua's affidavit did not show sufficient cause that may have prevented her and her co administrators from substituting the 2<sup>nd</sup> Plaintiff within the timelines provided by the law.

The application dated 27/04/2016 has no merit and it is hereby dismissed. This being a family dispute, each party will bear its own costs.

**Dated and delivered at Nairobi this 11<sup>th</sup> day of July 2019**

**K.BOR**

**JUDGE**

**In the presence of:-**

Mr. Wachira Nderitu holding brief for Mr. M. Kinuthia for the Plaintiffs

Mr. V. Owuor- Court Assistant

No appearance for the Defendant