



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT MERU**

**ELC CASE NO. 82 OF 2015**

**EDWARD MURIIRA M' MAINGI.....PLAINTIFF**

**MWITI MAINGI ROBINSON.....APPLICANT**

**VERSUS**

**JULIUS MUGAMBI JOSEPHAT.....DEFENDANT**

**RULING**

1. The Plaintiff through the application dated 8<sup>th</sup> February 2019 prays for the revival of this suit which was dismissed on 14<sup>th</sup> December 2018. He also seeks to be substituted in place of Edwin Muriira M' Maingi (now deceased).

2. The application is unopposed. This suit was dismissed with costs for want of prosecution on 14<sup>th</sup> December 2018. On the material day the plaintiff and his advocate were not present. The Defendant's advocate was present and ready to proceed with one (1) witness.

3. The applicant alleges that on the particular day, they came with the plaintiff (now deceased) to the court premises and tried to look for their advocate but they were unable to trace him. They later learnt that the matter had been called out and dismissed. He avers that the non-attendance of the advocate was inadvertent and the same should not be visited upon the estate of the deceased who are eager to prosecute the suit.

4. The plaintiff herein died on 29<sup>th</sup> December 2018. Grant of letters of Administration Ad-litem were issued to the applicant on 31<sup>st</sup> January 2019.

5. Order 12 Rule 7 of the Civil Procedure Rules provides as follows;

**“Where under this Order judgment has been entered or the suit has been dismissed, the court, on application, may set aside or vary the judgment or order upon such terms as may be just”.**

6. The application herein has been made two months after the suit had been dismissed. Given the untimely death of the plaintiff and the time taken to secure grant of letters of administration Ad litem, I consider that the delay is not unreasonable and I hereby give the applicant the benefit of doubts and proceed to allow the application.

7. The Court therefore makes the following Orders;

**(i) The Orders of Dismissal of the suit made on 14<sup>th</sup> December 2018 be and are hereby set aside and the suit is reinstated.**

**(ii) Edward Muriira M' Maingi (now deceased) be and is hereby substituted with Mwiti Maingi Robson ( the legal representative of the estate of deceased)**

**(iii) No orders as to costs.**

**DATED, SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS 2<sup>ND</sup> DAY OF OCTOBER, 2019.**

**IN THE PRESENCE OF:-**

C/A: Kananu

Mutegi holding brief for Kiogora Mugambi for plaintiff

Defendant

**HON. LUCY. N. MBUGUA**

**ELC JUDGE**