



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT OF KENYA**

**AT NAKURU**

**ELC NO.617 OF 2013**

**DOUGLAS KABUGA ALIAS THIRA KABUGA.....PLAINTIFF**

**VERSUS**

**CHARITY MUTHONI KABUGA.....1<sup>ST</sup> DEFENDANT**

**DISTRICT LAND REGISTRAR NAKURU.....2<sup>ND</sup> DEFENDANT**

**ATTORNEY GENERAL.....3<sup>RD</sup> DEFENDANT**

**RULING**

***(Application for substitution of a deceased defendant; application not opposed; application allowed)***

1. The application before me is that dated 2 October 2017 filed by one Henry Njogu Kabuga. It is an application said to be brought pursuant to the provisions of Order 24 Rule 4 (1) and (2) of the Civil Procedure Rules and Section 3A of the Civil Procedure Act, Cap 21, Laws of Kenya. The substantive order sought in the application is for the substitution of the applicant for the 1st defendant who is said to be deceased.

2. The suit itself was commenced by way of a plaint which was filed on 3 December 2013. In the plaint, the plaintiff has pleaded that he is the lawful proprietor of the land parcel Bahati/Kabatini Block 1/714 which land was previously held by Ndeffo Limited. It is pleaded that while the plaintiff was a minor, his mother purchased a share in his name in the year 1974 which entitled the plaintiff to the suit land. It is pleaded that on 27 November 1998, under unclear circumstances, the 1st defendant, Charity Muthoni Kabuga, got registered as proprietor of the suit land instead of the plaintiff and it is the position of the plaintiff that this was procured through fraud. In the suit, the plaintiff has sought to be declared owner of the suit land and for cancellation of the 1st defendant's title. The 1st defendant filed defence where she refuted the claims of the plaintiff and asserted that she has good title to the suit land.

3. Through this application, it has emerged that the 1st defendant is now deceased. The applicant has annexed a copy of a Certificate of Death which shows that the 1st defendant died on 4 August 2015. The applicant has also annexed a copy of a Limited Grant of Letters of Administration Ad Litem, which reveals that the applicant was appointed on 24 October 2016 as administrator of the estate of the 1st defendant, limited for purposes of pursuing the present suit.

4. Order 24 Rule 4, upon which this application is premised states as follows :-

***Procedure in case of death of one of several defendants or of sole defendant***

*(1) Where one of two or more defendants 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.*

*(2) Any person so made a party may make any defence appropriate to his character as legal representative of the deceased defendant.*

*(3) Where within one year no application is made under subrule (1), the suit shall abate as against the deceased defendant.*

5. It will be seen from the above that where the cause of action survives the death of the defendant, a person who is legal representative of the deceased, can apply to be made a party to the suit. The application is however supposed to be made within one year, as noted in Order 24

Rule 3 above, or else the suit will abate. I note that the deceased died on 4 August 2015, and this application was filed on 2 October 2017, more than 2 years after the demise of the 1st defendant. Technically, this suit has thus abated but the court has discretion to revive an abated suit. Although I was not provided with any reasons why the application was filed more than one year after the death of the 1st defendant, in my discretion, I will revive the suit though abated, so that the parties can have opportunity to ventilate their respective positions with regard to the suit property.

6. I allow the application for substitution and also revive the otherwise abated suit. I order that the applicant be substituted for the deceased 1st defendant and allow him to continue the suit on behalf of the estate of the deceased 1st defendant.

7. The application was not opposed and I therefore make no orders as to costs.

8. It is so ordered.

**Dated, signed and delivered in open court at Nakuru this 2<sup>nd</sup> day of May 2018.**

**JUSTICE MUNYAO SILA**

**ENVIRONMENT & LAND COURT AT NAKURU**

**In presence of: -**

Mr. Kipkeni holding brief for Mrs Ndeda for the plaintiff.

Court Assistant: Nelima Janepher.

**JUSTICE MUNYAO SILA**

**ENVIRONMENT & LAND COURT AT NAKURU**