

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC. CASE NO. 25 OF 2009

GREGORY KIMANI THUITA.....PLAINTIFF

-VERSUS-

THE ADMINISTRATORS OF THE ESTATE OF

DAVID MURIUKI KABERERE.....1ST DEFENDANT

SUSAN WANJIRU KABERERE.....2ND DEFENDANT

THE CITY COUNCIL OF NAIROBI.....3RD DEFENDANT

RULING

Through the application dated 8/6/2017, the applicant seeks to set aside the order made by the Hon. Mr. Justice Mutungi on 26/5/2015 dismissing the suit and to have the suit reinstated. A further prayer is made for this application to be heard together with the application dated 11/11/2016 which seeks to substitute the Plaintiff with the legal representative of the estate.

The application is made on the grounds that the court of its own motion dismissed the suit on 26/5/2015 without affording the Plaintiff a chance to be heard before making the order. The Plaintiff maintains that he was never served with a notice to show cause so that he would have attended court and urged the court not to dismiss the suit. The application is supported by the affidavit of the Plaintiff's Advocate.

The Plaintiff died on 14/3/2015 and it is stated that the cause of action survived the Plaintiff. Hannah Wanjiru Kimani and Regina Murugi Kimani petitioned the court for limited grant of letters of administration *ad litem* and were granted the limited grant on 24/9/2015. The Defendants were served but they did not attend court or file responses to the applications.

Under Order 12 Rule 7 of the Civil Procedure Rules where a suit has been dismissed the court may set aside the order upon such terms as maybe just. A person claiming to be the legal representative of a deceased Plaintiff may apply to revive a suit which has abated or to set aside an order of dismissal pursuant to Order 24 Rule 7. If it is proved that he was prevented by sufficient cause from continuing the suit, the court shall revive the suit or set aside such dismissal upon such terms as to costs or as the courts deems fit.

The court has considered the applications together with the supporting affidavits and grants the applications dated 11/11/2016 and 8/6/2017 on condition that this suit is heard and determined within six (6) months of today's date failing which the suit shall stand dismissed without the court making any further orders. Costs shall be in the cause.

Dated and delivered at Nairobi this 1st day of November 2017.

K. BOR

JUDGE

In the presence of: -

Mr. Mugisha for the Plaintiff

No appearance for the Defendants

Mr. Vincent Owuor- Court Assistant