



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT NAIROBI**

**ELC CASE NO. 351 OF 2018**

**ANNAH MUTHONI CHEGE.....PLAINTIFF**

**=VERSUS=**

**EJIDIAH WANJIKU.....1<sup>ST</sup> DEFENDANT**

**LINUS KAFIGA.....2<sup>ND</sup> DEFENDANT**

**JOHN GICHUKI.....3<sup>RD</sup> DEFENDANT**

**GEORGE MUGO.....4<sup>TH</sup> DEFENDANT**

**TONY CHEGE.....5<sup>TH</sup> DEFENDANT**

**BILHA MUTHONI.....6<sup>TH</sup> DEFENDANT**

**CHEGE MUGO.....7<sup>TH</sup> DEFENDANT**

**RULING**

**1.** This is the Notice of Motion dated 28<sup>th</sup> July 2020 brought under order 24 rule 1 and 7(2) of the Civil Procedure Rules 2010 section 3A and 63 (c) and € of the Civil Procedure Act, Cap 21 laws of Kenya and all other enabling provisions of the law.

**2.** It seeks orders:-

**1. Spent.**

**2. That the honorable court be pleased to set aside its order herein of the 25<sup>th</sup> September, 2019 dismissing and or declaring this suit at abated/terminated.**

**3. That the honourable be pleased to make and order reviving the instant suit forthwith.**

**4. Costs of this application be provided for.**

**3.** The grounds are on the face of the application and are set out in paragraphs (a) to (g).

**4.** The application is supported by the affidavit of Rose Wanjiru Muriu, daughter of the deceased plaintiff, sworn on the 28<sup>th</sup> October 2019.

**5.** The application is opposed. There are grounds of objection filed on behalf of the defendants dated 16<sup>th</sup> December 2019.

**6.** On the 18<sup>th</sup> December 2019, the court with the consent of the parties directed that the application be canvassed by way of written submissions. The court also directed that the submissions be filed within twenty-one (21) days. By the time of writing this ruling the Applicants had not filed submissions.

7. I have considered the Notice of Motion and the affidavit in support. I have considered the grounds of objection and the written submissions filed on behalf of the defendants/respondents. The issue for determination is whether this application is merited.

8. **Order 24 rule 3(1)** of the Civil Procedure Rules provides that:

*“Where one of two or more plaintiffs dies and the cause of action does not survive or continue to the surviving plaintiff or plaintiffs alone, or a sole plaintiff or sole surviving plaintiff 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 plaintiff to be made a party and shall proceed with the suit.”*

**Rule 3(2)** of the Civil procedure Rules provides that:-

*“Where within one year no application is made under subrule (1), the suit shall abate so far as the deceased plaintiff is concerned, and, on the application of the defendant, the court may award to him the costs which he may have incurred in defending the suit to be recovered from the estate of the deceased plaintiff:*

*Provided the court may, for good reason on application, extend the time.”*

9. I have gone through the court record, the Notice of Motion dated 10<sup>th</sup> August 2018 comes up for hearing on 25<sup>th</sup> September 2019. This date was taken in the presence of both Miss Okoth for Mr. Aloo for the plaintiff and the defendants counsel. On the 25<sup>th</sup> September 2019 there was no appearance for the plaintiff/applicant. Mr. Kahuthu for the defendants informed the court that the plaintiff/applicant had passed on. He urged the court to mark the suit as abated.

10. The court dismissed the Notice of Motion dated 10<sup>th</sup> May 2018 and marked the suit as abated. It is therefore not true the claim by the Applicants that the plaintiff’s counsel was not aware of the proceedings of 25<sup>th</sup> September 2019.

11. It is not in dispute that the plaintiff passed on 12<sup>th</sup> September 2018. It is more than one year since her demise. There has been no substitution. I find that the suit has indeed abated.

12. I have gone through the affidavit of Rose Wanjiru Miriu one of the applicants herein. I find no good reason given to warrant this court to extend the time for substitution.

13. All in all, I find no merit in this application and the same is dismissed. Each party do bear own costs.

It is so ordered.

**DATED, SIGNED AND DELIVERED IN NAIROBI ON THIS 17<sup>TH</sup> DAY OF JUNE 2021.**

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**L. KOMINGOI**

**JUDGE**

**In the presence of:-**

No appearance for the Plaintiff

Mr. Kahuthu for the Defendants

Phyllis - Court Assistant