



REPUBLIC OF KENYA



KENYA LAW
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**Korir v St Elizabeth Academy (Civil Suit 251 of 2014)
[2024] KEHC 2702 (KLR) (Commercial and Tax) (1 March 2024) (Ruling)**

Neutral citation: [2024] KEHC 2702 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL SUIT 251 OF 2014
MN MWANGI, J
MARCH 1, 2024**

BETWEEN

BENGERA ARAP KORIR PLAINTIFF

AND

ST ELIZABETH ACADEMY DEFENDANT

RULING

1. The legal representative of the plaintiff, Rashid Kipkoech Korir, filed an application dated 6th October, 2023 brought under the provisions of Sections 1A, 1B and 3A of the *Civil Procedure Act*, and under Order 24 Rule 3 and Order 51 Rule 1 of the *Civil Procedure Rules*, 2010 and all enabling provisions of the law seeking the following orders-
 - i. That this Honourable Court be pleased to substitute the name of the plaintiff herein, Bengeria Arap Korir, who died on 24th November, 2022, with the name of Rashid Kipkoech Korir, who is the legal representative of the estate of the deceased who shall proceed with the suit;
 - ii. That upon prayer 1 above being granted, the substitute plaintiff be granted leave to amend the plaint and the and the witness statements herein reflect changes in the pleadings;
 - iii. The application has been brought timeously and without delay; and
 - iv. It is mete and just that the orders being sought be granted.
2. The application is anchored on the grounds in support of it and an affidavit sworn on 6th October, 2023 by Rashid Kipkoech Korir, the applicant herein.
3. Although the defendant was served with the application, the applicant's submissions and list of authorities as well as a mention notice from the firm of Manthi Masika & Company Advocates, the



defendant did not file any response to the application. This Court is satisfied that there was proper service by way of email to the defendant's director, as the law firm that had been representing it had on 4th November, 2021, been granted leave by the Court to cease from acting for the defendant. Since then, the defendant has never appointed another Advocate to represent it.

4. The applicant deposed that on 21st June, 2023, the Court granted him limited grant of letters of administration ad litem for purposes of prosecuting the present suit on behalf of the deceased.
5. He averred that it is in the interest of justice that he substitutes the deceased plaintiff.

Determination

6. I have considered the application, the depositions made by the applicant and the applicable law. The sole issue for determination is if the application is merited.
7. Order 24 Rule 3 of the *Civil Procedure Rules*, 2010 lays down the procedure to be followed in the case of death of one of several plaintiffs or of a sole plaintiff. It states as follows:

“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.”

8. In considering the application of the provisions of Order 24 of the *Civil Procedure Rules*, 2010, the Court of Appeal in the case of *Said Sweilem Gheithan Saanum v Commissioner of Lands (being sued through Attorney General) & 5 others* [2015] eKLR, stated as follows-

“There are three stages according to these provisions. As a general rule the death of a plaintiff does not cause the suit to abate if the cause of action survives. But within one year of the death of the plaintiff or within such time as the court may in its discretion for “good reason” determine, an application must be made for the legal representative of the deceased plaintiff to be made a party.....”.

9. The applicant herein was authorized vide the grant of letters of administration ad litem to pursue this suit on behalf of the deceased plaintiff. In the absence of any objection on the part of the defendant, I hereby grant the following orders-
 - i. Leave is hereby granted to the applicant herein, Rashid Kipkoech Korir, being the legal representative of the estate of the deceased to substitute the deceased plaintiff Bengeria Arap Korir who died on 24th November, 2022, and to prosecute this suit on behalf of the deceased plaintiff;
 - ii. The applicant is given 30 days to amend the plaint, file and serve the same together with compliance documents;
 - iii. Corresponding leave is granted to the defendant to amend its statement of defence and to file any outstanding compliance documents; and
 - iv. Costs shall be in the cause.

**DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 1ST DAY OF MARCH, 2024.
RULING DELIVERED THROUGH MICROSOFT TEAMS ONLINE PLATFORM.**



NJOKI MWANGI

JUDGE

In the presence of:

Mr. Kabu h/b for Mr. Masika for the plaintiff/applicant

No appearance for the defendant/respondent

Ms B. Wokabi – Court Assistant.

