



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CIVIL APPEAL NO. 92 OF 1988

SAMSON T. THUMBI.....APPELLANT

-VERSUS-

SOPHIA WANJIRU WAINAINA.....1ST RESPONDENT

PETER KINYANJUI NJUGUNA.....2ND RESPONDENT

STEPHEN GACHOHI NJUGUNA.....3RD RESPONDENT

JOHANA GICHO NGATHO.....4TH RESPONDENT

STEPHEN NJOROGE KARUNGU.....5TH RESPONDENT

RULING

1) Kiburi wa Thumbi, the applicant herein, took out the summons dated 28th January 2019 in which he sought for an order to have him enjoined as a party in this appeal in place of the late Samson Thumbi Kiburi who passed away on 25.9.2002. The applicant swore an affidavit which he filed in support of the motion.

2) It is the submission of the applicant that judgment in this appeal was delivered on 12th March 1991 and that the appellant passed away before executing the decree. The applicant further stated that upon the appellant's death, he together with the late Joyce Wanjiru Thumbi, obtained letters of administration in respect of the estate of Samson Thumbi Kiburi, deceased. The applicant has specifically applied to be enjoined to this appeal to enable him execute the decree.

3) In determining an application for joinder of parties, the court has a wide discretion. However, an applicant must show that he or she is a necessary party in the action. It should also be shown that the action is still pending and alive. In this appeal, the following factors appear undisputed:

First, that the appellant passed away on 25th September 2002, about 17 years ago.

Secondly, that the decision on appeal was delivered on 12th March 1991, about 28 years ago.

Thirdly, that the applicant took out letters of administration in respect of the estate of Samson Thumbi Kiburi, deceased on 4th April 2005.

4) I have already pointed out that the applicant is seeking to be enjoined to this appeal solely for purposes of executing the decree which was issued about 28 years ago.

5) Under Section 4(4) of the limitation of Actions Act (Cap 22 Laws of Kenya), an action may not be brought upon a judgment after the expiry of 12 years from the date it was delivered.

6) It is therefore clear that the joinder of the applicant to this appeal serves no useful purpose. Consequently, I decline to grant the order but instead dismiss the summons with no order as to costs.

Dated, Signed and Delivered at Nairobi this 14th day of May, 2019.

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J. K. SERGON

JUDGE

In the presence of:

..... for the Appellant/Applicant

..... for the 1st Respondent

..... for the 2nd Respondent