



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

ORIGINATING SUMMONS NO. 22 OF 2014

DOROTHY N. INOTI.....PLAINTIFF

VERSUS

SALOME NKATHA M'IRINGOI.....1ST DEFENDANT

JACOB KARANI.....3RD DEFENDANT

JAMES MANYARA.....4TH DEFENDANT

GAKII KINYUA

MOLLY KATHURE

LUCT KARAMBU.....APPLICANTS

RULING

1. The Notice of Motion before me is dated 3rd December 2018 and is brought under section 1A, 1B & 3A of the Civil Procedure Act and Order 51 & Order 24 Rule 3 of the Civil Procedure Rules as well as Article 159 (2) of the Constitution of Kenya and all other enabling provisions of the Law. Applicants are seeking orders of review, varying or vacation of the orders dismissing the suit for want of prosecution and revive the same for hearing on merit. They also seek orders to be substituted as plaintiffs in this suit.

2. The application is based on the grounds on the face of it and in the supporting affidavit of Gakii Kinyua Kiungu who deponed that on 22nd June 2018, this suit was dismissed for want of prosecution. The plaintiffs advocate at that time was unable to proceed with the matter because of lack of instructions from the plaintiff. Unknown to him the plaintiff was deceased, having been unwell for some time. The family had obtained a limited grant of letters of administration strictly for the purposes of going on with this case.

3. The respondent did not file any documents in opposition to the application.

4. This suit was dismissed on 21.6.2018 for want of prosecution. However, the applicants herein later filed this Notice of Motion explaining the circumstances under which the plaintiff was absent in court on the date of hearing. The plaintiff had been ill and she passed on.

5. **Order 24 Rule 7 of the Civil Procedure Rules, 2010**, titled "Effect of abatement or dismissal provides that:-

“(2) The plaintiff or the person claiming to be the legal representative of a deceased plaintiff or the trustee or official receiver in the case of a bankrupt plaintiff may apply for an order to revive a suit which has abated or to set aside an order of dismissal; and, if it is proved that he was prevented by any sufficient cause from continuing the suit, the court shall revive the suit or set aside such dismissal upon such terms as to costs or otherwise as it thinks fit”.

6. A perusal of annexure AE-1 (the limited grant) shows that plaintiff died on 11.3.2018, and the grant was issued on 3.9.2018. The grant also shows that it was for purposes of continuing with Meru ELC NO. 22 OF 2014. This is a clear indication that the legal representatives of the deceased were vigilant and they took appropriate steps to ensure that the case was prosecuted. Sadly the case was dismissed before the grant was obtained. I am therefore inclined to believe that the counsel for the plaintiffs had no instructions as at 21.6.2018 as plaintiff had passed on. I therefore find that applicants have demonstrated that there was sufficient cause which prevented them from prosecuting this case.

7. Final orders; I hereby allow the Notice of Motion dated 3.12.2018 with no orders as to costs.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS 7TH DAY OF NOVEMBER, 2019 IN THE PRESENCE OF:-

C/A: Kananu

Mwanzia holding brief for Kiautha A. for plaintiff

Muriithi holding brief for Kariuki for defendant

1st and 3rd applicants

HON. LUCY. N. MBUGUA

ELC JUDGE