



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

MILIMANI COMMERCIAL & TAX DIVISION

CIVIL SUIT NO. 89 OF 2007

GABRIEL MUTISO MAANDAPLAINTIFF/APPLICANT

VERSUS

DAVANIS SUPPLIES LIMITED1ST DEFENDANT/RESPONDENT

DAVID K. MUNDUI2ND DEFENDANT/RESPONDENT

EVANS MATUNDA3RD DEFENDANT/RESPONDENT

THE COMMISSIONER OF LANDS4TH DEFENDANT/RESPONDENT

EXPORT PROCESS ZONE5TH DEFENDANT/RESPONDENT

RULING

1. The ruling relates to a notice of motion application dated 4th April 2019, seeking for an order of the court for substitution of the deceased plaintiff Gabriel Mutiso Maanda, Beatrice Silu Mutiso and Amos Kilungya Mutiso, the legal administrators of the deceased's estates and consequently amend the plaint accordingly.
2. The application supported by the affidavit sworn by Beatrice Situ Mutiso, one of the administrators. She avers that the plaintiff died on 27th December 2008, whereupon the applicant applied for the letters of administration intestate vide Mombasa High Court Succession Cause No. 130 of 2009. An objection and cross appeal was raised in the petition aforementioned, which objections and cross petition were later finalized by way of consent in December 2010 and on 20th April 2011, a certificate of confirmation of grant was issued.
3. Consequently, on 30th August 2011 by way of chamber summons, the Applicant applied to be substituted as the plaintiff in this suit but application was disallowed on the grounds that the suit had abated and that therefore, there was no suit at that time which the applicants could be substituted into.
4. As a result, the Applicant's advocates on record through a notice of motion application dated 27th August 2012 sought to review the orders of the court of 19th January 2012, in so far as it marked the whole suit as abated. The application was allowed against the 1st, 2nd and 3rd Defendants and by extension the 4th Defendant to the effect that the suit had not yet abated.
5. The Applicants aver that they were not indolent in filing the application and intend to prosecute and protect the interest of the estate of the deceased against the Defendants. It is in the best interest of justice that the application be allowed.
6. The Respondent filed grounds of opposition and argued that, the application is unmerited because it has been filed out of time without leave of court, is incompetent, misconceived and an abuse of court's process. The orders sought cannot be granted.
7. I have considered the arguments and the oral submissions and I find that, from the chronology of events detailed in the affidavit in support of the application, which are not disputed, the applicant have shown by the certificate of grant of administration that, they are the legal representative of the deceased's estate and therefore the grounds in support of the application have merit.
8. Furthermore, the proposed amendments do not go to the root or the substance of the claim but merely introduce the applicants as parties. It

does not change the character of the suit. Having allowed the substitution, it only makes legal sense that the amendment be allowed to reflect the identity of the parties as they are.

1. I therefore allow the application with orders that, the costs thereof be in the cause.

2. Those then are the orders of the court.

Dated, delivered and signed in an open court this 12th day of November 2019.

G.L. NZIOKA

JUDGE

In the presence of:

Mr Mugo holding brief for Mr Najim for the Applicant

Mr Muange holding brief for Mr Omoti for the 1st to 3rd Respondents

No appearance for the 4th and 5th Respondents

Dennis the Court Assistant.