

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

MISC. CIVIL APPLICATION NO. 372 OF 2015

KENYA REVENUE AUTHORITY.....APPLICANT

VERSUS

NDORI ABSALOM MAJINGA

T/A AMARI GENERAL SUPPLIES.....RESPONDENT

R U L I N G

1. If the Respondent died in March 2016, then, the suit abated at the end 12th months after there was no application to substitute the deceased. That fact is not altered by the provisions of Order 24 Rule 10 which in my understanding provides for situations where a suit is heard and concluded on merits and what is outstanding is the execution of a final orders. I hold that Order 24 Rule 10 does not apply to execution of Interim /interlocutory orders.
2. In any event, I have read the court file and noted that the last time the interim orders were extended was on the 21/12/2015. It follows therefore that the extension having been upto the 17/2/2016 the same needed a further extension to continue in existence, but were never extended on the 17/2/2016.
3. Further even if the orders had been extended on the 17/2/2016, such orders could only have a life of upto and not more than 12 months by operation of Order 40 Rule 6 Civil Procedure Rule.
4. Those being the facts as disclosed by the court record, I do consider that this suit did abate sometimes in March 2017 and when it did so abate, no order remained in force to invite the Application by the Respondent dated 13/12/2017.
5. In addition, the Respondent having died and no substitution having been made in his place by a personal representative, nobody, included the personal representative, can validly benefit or be burdened by a court order on this file prior to being made a party. I consider the Application alleged to be by the deceased and seeking release of some money to have been utterly misconceived and does not merit courts time being spent upon.
6. For clarify purposes, this matter stands abated and there is no order now in force to be insisted upon by the parties and even the bank upon which the orders of 11/12/2015 were served.
7. Let this order be extracted and served on the bank for purposes of information and appropriate action.

Dated and delivered this 4th day of June 2018.

P.J.O. OTIENO

JUDGE