



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT MACHAKOS**

**ELC. CASE NO. 391 OF 2012**

JACOB M. NZOMO.....1<sup>ST</sup> PLAINTIFF

SELA MUTHIKE MAINGI.....2<sup>ND</sup> PLAINTIFF

**VERSUS**

DAUDI WAMBUA NYAKA.....1<sup>ST</sup> DEFENDANT

MUTIO NYAKA.....2<sup>ND</sup> DEFENDANT

JOHN KIOKO MUTUA.....3<sup>RD</sup> DEFENDANT

SAMUEL NJAGI.....4<sup>TH</sup> DEFENDANT

ISAAC MUTHAMA KIMILU.....5<sup>TH</sup> DEFENDANT

LUKENYA RANCHING CO-OPERATIVE SOCIETY LIMITED....6<sup>TH</sup> DEFENDANT

**AND**

SIRIEL MBITHE DAVID.....1<sup>ST</sup> APPLICANT

JULIUS MWANZA NZOMO.....2<sup>ND</sup> APPLICANT

**RULING**

1. In the Chamber Summons dated 16<sup>th</sup> October, 2019, the Applicants have sought for the following orders:

*a. That the Honourable Court be pleased to revive this suit herein and the time within which the instant Application ought to have been filed to be enlarged to the date of its filing.*

*b. That upon granting prayer (1) hereinabove the Honourable Court be pleased to substitute the names of Siriel Mbithe David and Julius Mwanza Nzomo being the bona fide Legal Administrators of the Estate of Jacob M. Nzomo now deceased in the instant matter so as to take the positions of the 1<sup>st</sup> Plaintiff and the 2<sup>nd</sup> Plaintiff respectively.*

*c. That upon granting prayer (2) hereinabove the Honourable Court do grant the Applicants leave to amend the Plaint accordingly so as to capture and reflect the fresh parties and/or any other amendments that may become fit and necessary for the interest of justice.*

*d. That the Draft Amended Plaint annexed hereto be deemed as duly filed and properly on record.*

2. The Application is supported by the Affidavit of one of the Applicant who has deponed that him, together with his Co-Applicant, are the lawful legal administrators of the Estate of the late Jacob M. Nzomo (*deceased*); that they obtained Letters of Administration Ad Litem in Machakos Chief Magistrate's Court Succession Cause No. 18 of 2019 on 1<sup>st</sup> April, 2019 and that the deceased died intestate on 1<sup>st</sup> October, 2013.

3. The 1<sup>st</sup> Applicant deponed that at the time of his death, the deceased was the 1<sup>st</sup> Plaintiff and that the subject matter of the suit forms part of the Estate of the deceased; that the outcome of the suit would have a direct bearing on the Estate of the deceased and the beneficiaries thereto and that this suit has abated.

4. The 1<sup>st</sup> Applicant finally deponed that it is in the interest of Justice that the legal representatives of the deceased be made parties to the suit and that the Application should be allowed.

5. I have gone through the entire file and I have not come across either the Plaint nor the Summons to Enter Appearance. Indeed, even the alleged Draft Amended Plaint is not attached on the current Application.

6. Having not addressed this court on the issue of whether a Plaint was filed in this matter, or whether Summons to Enter Appearance were ever extracted and served on the Defendants, I find that the current Application has no “*legs*” to stand on. Indeed, there is no suit known in law before the court, summons having not been issued since the year 2012.

7. The Application and the entire suit is therefore struck out for being incompetent.

**DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 8<sup>TH</sup> DAY OF MAY, 2020.**

**O.A. ANGOTE**

**JUDGE**