



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**CIVIL SUIT NUMBER 1860 OF 1993**

**MRS ANN WANJIRU WANGAI. .... APPLICANT/OBJECTOR**

**VERSUS**

**G. C. MURAGURI. .... RESPONDENT**

**AND**

**MAGU & WANGAI T/A ROSAM ENTERPRISES...1<sup>ST</sup> INTERESTED PARTY**

**SAMUEL WANGI MUGO. .... 2<sup>ND</sup> INTERESTED PARTY**

**RULING**

The Plaintiff/Applicant has moved the court by way of Notice of Motion dated 2<sup>nd</sup> July, 2015 under Order 24 Rule 2 of the Civil Procedure Rules seeking the following orders: -

1. That the name of Gitari Cyrus Muraguri who died on 11<sup>th</sup> July, 2014 be substituted with the names of Melody Wambui Muraguri, Moses Wanjohi Muraguri, Moses Gitari Muraguri and Antony Waweru Muraguri as Plaintiffs in place of Gitari Cyrus Muraguri the deceased.
2. That the costs of this application be in the cause.

The application is grounded on the annexed affidavit of Moses Wanjohi Muraguri who is one of the administrators of the estate of Gitari Cyrus Muraguri (deceased).

It is averred that the deceased who was the Plaintiff in this case died on the 11<sup>th</sup> day of June, 2014. That the High Court issued a grant of letter of administration intestate on the 15<sup>th</sup> December, 2014 and a copy of the same is annexed to the affidavit and marked MWM A.

That it is necessary to remove the name of the deceased from the case and substitute him with melody Wambui Muraguri, Moses Wanjohi Muraguri, Moses Gitari Muraguri and Antony Waweru Muraguri.

The Objector herein, filed grounds of opposition on the 10<sup>th</sup> September, 2015 and has raised the following grounds: -

- i) The application does not lie at all as the suit has by law abated.
- ii) No reason has been given for the delay in bringing the application despite the fact that letters of

administration were issued on the 15<sup>th</sup> December, 2014.

In his submissions, counsel for the Applicant argued that the application for substitution was filed before the expiry of one year from the date of death of the Plaintiff as required by the law. He relied on the case of **Peterson Gichohi Vs Maina Johana Mano alias Joseph Mana Miano**, ELC Civil Appeal No. 14/2015. He submitted that in the case quoted herein above, the court allowed the substitution notwithstanding that it was ten years after the death of the Plaintiff and urged the court to allow the application.

I have considered the application, the grounds of opposition and the submissions made by the counsel for the Applicant. The application is brought under Order 24 Rule 3(2) which provides: -

***“Where within one year no application is made under subrule (1), the suit shall abate so far as the deceased Plaintiff is concerned and on the application of the Defendant the court may award to him the costs which may be incurred in defending the suit to be recovered from the estate of the deceased Plaintiff provided the court may, for good reason on application, extend the time.”***

Counsel for the Applicant has argued that he brought the application within one year. Going by that argument, the Applicants suit was still alive until 10<sup>th</sup> July, 2015 when it abated. As it stands now there is no suit pending before the court and the orders sought to substitute the applicants cannot issue in a vacuum.

The court has perused the authority relied on by the Applicants and the facts in that case are very different from the facts of the case before the court in that the Applicant in ELC Civil Appeal No. 14 of 2015 (supra) had sought an order to revive the suit which the Applicants herein have not sought. This could be because, when he filed the application, the suit was still alive but thereafter he ought to have amended the Notice of Motion to include a prayer to revive the suit which he failed to do, notwithstanding that it was one of the grounds of opposition by the objector.

Be that as it may, it is the finding by this Honourable court that the application has no merits and it is hereby struck out with no orders as to costs.

Dated, signed and delivered at Nairobi this 2<sup>nd</sup> day of February, 2017.

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**L NJUGUNA**

**JUDGE**

***In the presence of***

..... *for the Applicant/Objector*

..... *for the Respondent*

..... *for the 1<sup>st</sup> interested Party*

..... *for the 2<sup>nd</sup> Interested Party*