



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CIVIL SUIT NUMBER 481 OF 2008**

**DAVID NJENGA WANJERI. .... 1<sup>ST</sup> PLAINTIFF**

**NAHASHON MUHORO. .... 2<sup>ND</sup> PLAINTIFF**

**VERSUS**

**THE ATTORNEY GENERAL. .... 1<sup>ST</sup> DEFENDANT**

**JOSEPH KARIBU NJENGA. .... 2<sup>ND</sup> DEFENDANT**

**R U L I N G**

The application before the court is the Notice of Motion dated 23<sup>rd</sup> January, 2015. It seeks, the substitution of the name of Nahashon Muhoro Waweru, (Deceased) who is Plaintiff, with that of the Administrator Ad Litem, Margaret Wanjiku Waweru.

The facts show that the Plaintiff aforementioned, died on 10<sup>th</sup> January, 2014 while this suit was pending. A grant of Letters of Administration was obtained by Margaret Wanjiku Waweru on 16<sup>th</sup> September, 2014. But this application was not filed until 23<sup>rd</sup> January, 2015.

It is not in doubt that if substitution was not effected with one year after 10<sup>th</sup> January, 2014, which in this case fell on 9<sup>th</sup> January, 2015, this suit would abate. To that end this suit abated on 9<sup>th</sup> January, 2015 even before this application was filed. That is to say that there is presently no valid suit to which or in respect of which the sought substitution of Margaret Wanjiku Waweru would be done.

It is possible for the applicant to have filed a specific application for the extension of time as provided under Order 24 Rule 3(2) of the Civil Procedure Rules. However, no such extension has been formerly and properly sought. In the above circumstances the relief sought in this application is incapable of being granted by this court. This application is accordingly hereby dismissed with costs. Orders accordingly.

Dated and Delivered at Nairobi this 7<sup>th</sup> day of July, 2015.

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**D A ONYANCHA**

**JUDGE**