



**REPUBLIC OF KENYA**

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

**SUCCESSION CAUSE NO.361 OF 2005**

**IN THE MATTER OF THE ESTATE OF SALIM OKITI NANJIRA ..DECEASED**

**AND**

**MWANATENA AUMA OKITI .....PETITIONER**

**VERSUS**

**ASMAN ONYANCHI WANGA.....OBJECTOR**

**AND**

- 1. VIRGINA FUMWA MAKONGOLO .....1<sup>ST</sup> RESPONDENT**
- 2. EDWIN MURUKA .....2<sup>ND</sup> RESPONDENT**
- 3. JOHNSTONE WERE .....3<sup>RD</sup> RESPONDENT**
- 4. RAMDHAN OLALIE .....4<sup>TH</sup> RESPONDENT**
- 5. ABDALLAH SHIDANDA .....5<sup>TH</sup> RESPONDENT**

**RULING**

1. The application before me is the Notice of Motion dated 25/02/2015 but filed in Court on 26/02/2015. The Applicant, who is Mwanatena Auma Okiti prays for ORDERS:-
  1. THAT ASMAN OKITI NANJIRA, the above-named Applicant, be made a party as the legal representative of the deceased herein.
  2. THAT costs of this application be costs in the cause.
2. The application is premised on 2 grounds set out on the face thereon and is also grounded on the supporting affidavit Sworn by Asman Okiti Nanjira. The main ground in support of the application is that, the Petitioner herein Mwanatena Auma Okiti is since deceased. She is said to have died on 01/10/2014. Though the deponent refers to an annexure in the form of a limited grant issued in respect of the said Mwanatena Auma Okiti no such document is annexed to the affidavit. The deceased Petitioner is said to be the biological mother of the Applicant therein.
3. Though the application was duly served upon the Objectors, no reply affidavits and/or grounds of

- Objection were filed. The application therefore proceeded unopposed.
4. Under Order 24 Rule 3 of the Civil Procedure Rules, a deceased party to any proceedings may be substituted within a period of 12 months unless such period is extended by an order of the Court. In this case, the Petitioner is said to have died on 01/10/2014. The application herein was filed on 26/02/2015, which is well within the time stipulated in the rules.
  5. The application not having been opposed, I am satisfied that the applicant has made out a case for the orders sought. In the premises, the Notice of Motion dated 25/02/2015 be and is hereby allowed in terms of prayer 1 (one) thereof. Costs shall be in the cause.

Orders accordingly.

Ruling delivered, dated and signed in open Court at Kakamega this 14th day of July 2015.

**RUTH N. SITATI**

**J U D G E**

In the presence of:

N/A for Applicant

Mr. Nandwa for Akwala (present) for 2<sup>nd</sup> Objector

N/A for 1<sup>st</sup> Objector

Mr. Okoit Court Assistant