



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**

**AT KERICHO**

**CIVIL CASE NO. 9 OF 2005**

**ALICE CHEPKEMOI BUSES.....PLAINTIFF**

**VS**

**ELIJAH KIPKEMOI TOO.....1ST DEFENDANT**

**NATIONAL BANK OF KENYA LTD.....2ND DEFENDANT**

**JOSEPH KIPKEMOI RUTO.....3RD DEFENDANT**

**RULING**

This is the application dated 31<sup>st</sup> March 2015 by the 1<sup>st</sup> and 2<sup>nd</sup> Defendants. The same is supported by the grounds on the face of the application and the supporting affidavit of Stephen Njoroge an employee of the 2<sup>nd</sup> Defendant.

- The advocates for the plaintiff were served with the said application as per the affidavit of service filed by Mr. Kamonjo Kiburi advocate but they did not file any response to it.
- They were also not in court when this application came for hearing on 3<sup>rd</sup> November 2015.
- In his supporting affidavit Mr. Njoroge Stephen depones that the plaintiff died over one year ago and no steps have been taken to substitute her.

He has annexed a funeral programme **SKN2** in respect of the plaintiff. The programme shows that the plaintiff died on 7<sup>th</sup> August 2011 10.30A.M

There is also a letter marked SKN1 dated 8<sup>th</sup> January 2014 from the 1<sup>st</sup> and 2<sup>nd</sup> Defendants counsel to M/s Ojienda & Co. advocates. The letter addresses the delays in this matter and the fact of the plaintiff's death.

There appears to have been no response to it.

- The fact of death has not been controverted and I do find that indeed the plaintiff died on 7<sup>th</sup> August 2011 which is four (4) years three (3) months today.
- There is no indication that any steps have been taken by the plaintiff's counsel or family to substitute her. The period provided for under **Order 24 rule 3(2) of Criminal Procedure**

**Rule** for substitution is one year, which may be extended on application and on good grounds.

- My finding is that this suit has abated by operation of the Law. I therefore dismiss it on that account.

There shall be no Order as to costs.

**Delivered, Dated and Signed in open Court this 6<sup>th</sup> day of November 2015**

**H.I. ONG'UDI**

**JUDGE.**

**In the presence of:** ( None of the parties).