



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA**

**ELC CASE NO. 14 OF 2014**

**GURUCHARAN SINGH SABHERWAL..... PLAINTIFF**

**KAMALJIT KAUR SABHERWAL** (*Personal representative of the Estate of  
Gurucharan Singh Sabherwal*).....**APPLICANT**

**VERSUS**

**BEREDA IMBAKALA KHAYADI.....DEFENDANT/RESPONDENT**

**RULING**

The application is dated 17<sup>th</sup> December 2019 and is brought under Article 22 (2) (B), Article 40 (1), Article 159 (2) (D) & (E) of the Constitution of Kenya, Section 63 (E) and 95 of the Civil Procedure Act, Order 12 Rule 7, Order 24 Rule 3, and 7, Order 51 Rule 1 of the Civil Procedure Rules, 2010 seeking the following orders;

1. This application be certified urgent and be dispensed with ex-parte in the first instance.
2. This honourable court be pleased to reinstate and/or revive this suit.
3. This honourable court be pleased to extend the time for making an application for substitution of the deceased plaintiff.
4. Pursuant to the grant of orders (2) and (3) above, the court makes an order that the applicant herein be substituted in place of the deceased plaintiff as the personal representative of the estate of the deceased.
5. Costs of this application be in the cause.

It is based on the grounds that, the deceased plaintiff, Gurucharan Singh Sabherwal, instituted this suit on 23<sup>rd</sup> January, 2014 against the defendant/respondent. The plaintiff died on 7<sup>th</sup> December, 2016 before the suit was determined. This suit has abated. This honourable court dismissed this suit on 20<sup>th</sup> May, 2019 and 8<sup>th</sup> July, 2019 for want of prosecution. The death certificate was given on 16<sup>th</sup> July, 2019. Limited grant of letters of administration ad-litem were granted on 7<sup>th</sup> October, 2019. The applicant having received the necessary power and authority wishes to represent the estate of the deceased until further representation is granted and/or to the conclusion of the case. The applicant is apprehensive that the respondent who is currently on the suit land may engage in further developments on the suit land thus affecting the substratum of this suit. That this application has been timeously made. That there will be no prejudice occasioned on the respondent by the grant of the orders sought and it is in the best interest of justice and fairness that this application be allowed.

This court has considered the application and the submissions therein. It is based on the grounds that the deceased plaintiff, Gurucharan Singh Sabherwal, instituted this suit on 23<sup>rd</sup> January, 2014 against the defendant/respondent. The plaintiff died on 7<sup>th</sup> December, 2016 before the suit was determined. This suit has abated. This honourable court dismissed this suit on 20<sup>th</sup> May, 2019 and 8<sup>th</sup> July, 2019 for want of prosecution. The application was not opposed. I have perused the court file and find that this suit was dismissed on 8<sup>th</sup> July 2019 for non attendance. It was not until the 19<sup>th</sup> December 2019 when this application was filed. This is an old matter of 2014. The plaintiff died on 7<sup>th</sup> December, 2016 before the suit was determined. This suit has abated. Reasons advanced why this application should be granted are unacceptable.

In the case of *Utalii Transport Company Ltd & 3 Others vs NIC Bank & Another* (2014) eKLR, the court held that it is the primary duty of the plaintiffs to take steps to progress their case since they are the ones who dragged the defendant to court. The decision on whether the suit should be reinstated for trial is a matter of justice and it depends on the facts of the case. In *Ivita v Kyumbu* (1984) KLR 441, Chesoni J as he then was, stated that the test is whether the delay is prolonged and inexcusable and if justice will be done despite the delay. Justice is justice for both the plaintiff and the defendant. I find this application has no merit and I dismiss it with no orders as to costs.

It is so ordered.

**DELIVERED, DATED AND SIGNED AT KAKAMEGA THIS 27<sup>TH</sup> OCTOBER 2020.**

**N.A. MATHEKA**

**JUDGE**