



**REPUBLIC OF KENYA**

**High Court at Meru**

**Environmental & Land Case 321 of 1993**

**GEORGE KIRIMA** (*suing as legal representative of*

**M'MUGAMBI**

**M'MURUGU**.....**PLAINTIFF**

**VERSUS**

**RUFUS KIAMBATI M'IKURI**.....**DEFENDANT**

**RULING**

The Notice of Motion herein was filed under sections 1 A and 1B of the the Civil Procedure Act and Order 24 of the Civil Procedure Rules. It is dated 8th day of October, 2012 and seeks Orders:

- 1. That the suit herein has abated against the defendant herein.**
- 2. That costs be provided for.**

The Court is being moved to grant the said Orders on the ground that the defendant died on 10.6.2004 and no application was filed within the period of one year stipulated by the law for the appointment of a legal representative under order 24 rule 4(3). The defendant died on 10.6.2004.

The application was brought under a Certificate of Urgency with Counsel for the defendant alleging that the plaintiff/respondent has been habitually harassing the deceased's defendant's family in the name of the existence of the suit herein. Counsel for the defendant averred that the law was very clear and prescribed under Order 24 of the Civil Procedure Rules to the effect that where within one year of death, no application is made to substitute the name of the deceased person with the name of a legal representative, the suit shall abate. Counsel for the defendants referred the Court to the overriding principles contained in Sections 1A and 1B of the Civil Procedure Act which principles gave jurisdiction to the court to facilitate the just, expeditious, proportionate and affordable resolution of civil proceedings. The counsel lamented that the suit has been in court for the last 19 years and that almost 8 years after the defendant had died, the plaintiff had been indolent in taking the necessary steps to cite the deceased's defendant's dependants for the suit to proceed to its logical conclusion.

In his opposition to the application the plaintiff raised issues of succession. He claimed that the case had been in Court for 19 years. He prayed to the Court that delays and other technicalities be not used to derail the cause of justice.

Order 24 Rule 3 deals with the procedure to be followed in case of death of one of several plaintiffs or of a sole plaintiff.

Order 24 Rule 4 deals with the procedure to be followed in case of death of one of several defendants or of a sole defendant.

It reads:

**“4. (1) Where one of two or more defendants dies and the cause of action does not survive or continue against the surviving defendant or defendants alone, or a sole defendant or sole surviving defendant dies and the cause of action survives or continues, the Court on an application made in that behalf, shall cause the legal representative of the deceased defendant to be made a party and shall proceed with the suit.**

**2. Any person so made a party may make any defence appropriate to his character as legal representative of the deceased defendant.**

**3. Where within one year no application is made under subrule (1) the suit shall abate as against the defendant.”**

The court notes that a suit abates automatically after expiry of one year following the death of the plaintiff or defendant. But there is a major difference between the effect of the expiry of one year as it relates to the two parties. Order 24 Rule 3 has a proviso to the effect: “Provided the Court may for good reason on application, extend the time.” Order 24 rule 4 does not have such a proviso. If such a proviso, however, existed, the plaintiff would have to persuade the Court that the period of 8 years that has expired since the defendant died on 10.6.2004 would be defensible for a good reason to exist to move the Court to extend the time. The plaintiff did not offer any good defence of his apparent indolence.

I find that the delay of 8 years without any action being taken to cite the defendant is hopelessly outside any reasonable limit to extend the time in favour of the plaintiff. Abatement is not a mere technicality. It is a fundamental legal issue. In any case, Rule 24 (4) is clear and laconical. The suit has abated against the defendant. It is so determined.

I make no order as to costs.

**DATED AND SIGNED AT MERU THIS this 31st day of December 2012.**

**P. M. NJOROGE  
JUDGE**

**Ruling delivered in open court this 6th day of March, 2013 in the presence of :**

**cc. Mwonjaru**

.....**for Plaintiff**

.....**for Defendant**

**P. M. NJOROGE  
JUDGE**