



REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Civil Case 602 of 2008

HEZEKIAH MUNIU KARANJAPLAINTIFF

-VERSUS-

FLORA HEZEKIAH KARANJA1ST DEFENDANT

HANNAH HEZEKIAH KARANJA.....2ND DEFENDANT

THE ATTORNEY GENERAL.....3RD DEFENDANT

RULING.

1. By a Notice of Motion dated 24/9/2012 , the Applicant herein **Flora Hezekiah Karanja** has sought for Orders that:-
 - (a) The Suit herein has abated by virtue of the fact that the Plaintiff herein **Hezekiah Munio Karanja** died on 23rd June, 2011 as per the attached **Death Certificate marked FHK 1.**
 - (b) That the Plaintiff's Application dated 21/6/2011 be stuck out and the Interim Orders issued on 13/7/2011 by **Hon. Justice Mbogholi Msagha be set aside and each party to bear their own cost.**
2. The Application was supported by the Affidavit of **Flora Hezekiah Karanja** who avered that the Plaintiff herein died on 23/6/2011 and it is now more than one year since the Plaintiff died and the deceased plaintiff's representative have not applied to be a party in the suit. Plaintiff had been issued with Interim Orders on 13/7/2011 by Hon. Judge Mbogholi Msagha restraining the 1st and 2nd Defendants from dealing with the **LR NO. 76/504** . Plaintiff further deponed that on the interest of Justice , the suit has abated and the said Order should be set aside.
3. The Application herein was urged exparte because it was alleged that the Respondents Advocates were served with the hearing notice but they failed to attend Court.
4. I have perused the Affidavit of Service dated 19/2/2013 and the Hearing Notice attached therein. I have noted that the Process Server one **Kennedy M.Nyamweya** served the Hearing Notice to Ombachi Moriasi & Co. Advocates . The Hearing Notice attached also bears the receipt stamp from the Law firm Ombachi Moriasi & Co. Advocates dated 18/2/2013.

I have also perused the pleadings and I have noted the Plaintiff herein was represented in the first instant and subsequent proceedings by the Law firm of A . Kamau Chege & Co. Advocates of Uniafric House.

I have not seen a Notice of Change of Advocates. I do not know why the Applicants Advocates chose to serve the Hearing Notice to Ombachi Moriasi & Co. Advocates as there is no Notice of Change of Advocates filed in Court. The Application was therefore not properly served.

For the above reason, I find that it would not be proper to allow the instant application . Application dated 24/9/2012 **is hereby dismissed as the same was not properly served.**

- Costs in the cause.

Dated , Signed and delivered this 6th May, 2013.

L. N. GACHERU

JUDGE

6/5/2013

In the Presence of:-

.....For the Plaintiff/Applicant

.....For the Defendant/Respondent

..... Court Clerk_

L. N. GACHERU

JUDGE

6/5/2013

6/5/2013

L. N Gacheru Judge

Anne : Court Clerk

Kihungu holding brief Keshelo for the Defendants/ Applicants.

L. N GACHERU

JUDGE

6/5/2013

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Court.

Ruling Read in open Court .

L N GACHERU

JUDGE

6/5/2013

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