



REPUBLIC OF KENYA

High Court at Nakuru

Civil Case 195 of 2001

KANGOGO CHEPKEITANY.....PLAINTIFF

V

LABAN CHELELGO.....DEFENDANT

RULING

The Plaintiff, **Kangogo Chepkeitany** died in August, 2011. Counsel for the Plaintiff has not been able to substitute the plaintiff with a legal representative.

On 30th April 2013, counsels for both parties appeared before me. Counsel for the Plaintiff submitted that he did not have a client and had received no instructions from the family of the deceased to substitute the plaintiff. He averred that the suit had abated as more than a year had passed without an application to substitute being filed.

Counsel for the Defendant concurred with this line of submissions and prayed for costs.

No step having been taken since the death of the plaintiff to place the legal representative in the suit in place of the plaintiff, the suit has by virtue of **Order 24 (2) of the Civil Procedure Rules** which states:

**“where within one year no application is made under sub-rule 1, the suit shall abate so far as the deceased plaintiff is concerned, and on the application of the Defendant, the court may award to him the costs which he may have incurred in defending the suit to be recovered from the estate of the deceased plaintiff.”**

abated as against the Defendant. Accordingly, I order as follows:

**(1) The suit herein has abated against the Defendant.**

**(2) Costs to the Defendant to be recovered from the estate of the deceased plaintiff.**

**Dated, signed and delivered** this 2nd day of May, 2013.

**L. N. WAITHAKA**

**JUDGE**

**PRESENT**

Mr. Kahiga for Plaintiff

No appearance for defendant

Stephen Mwangi – Court Clerk