

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

Civil Appeal 113A of 2007

GERALD NJUE KAMURANGA.....APPELLANT

VERSUS

NJIRU NJOGU.....1ST RESPONDENT

RULING

The application before me is seeking 2 prayers in the revival of this appeal and the substitution of the applicant in place of the 2nd Respondent Stanley Nyaga Paul who is since deceased. The deceased is said to have died in January 2004 and so the case against him automatically lapsed by operation of Order XXIII Rule 4 (3) C. P Rules on 17/1/2005. The applicant says she did not come to court sooner due to financial difficulties. I have considered the explanation she has given but I do not find the same convincing in the least. I have nonetheless perused the Judgment appealed against and I note that the subordinate court made a finding that the disputed plot belonged to the deceased. In the event therefore that the appeal succeeds, the deceased's estate would be adversely affected. It is purely for that reason that I will exercise my discretion in her favour and allow this application. Consequently, I allow the application dated 30/6/2009 and allow the prayers sought with costs in the cause.

W. KARANJA

JUDGE

Delivered, signed and dated at Embu this 3rd day of Nov 2009.

In presence of:-Mr Okwaro for Mr. Mugambi and 1st Respondent.