

REPUBLIC OF KENYA

IN THE HIGH COURT

AT NAIROBI

MILIMANI COMMERCIAL AND ADMIRALTY DIVISION

Civil Case 1368 of 1999

NJOGU MAREGWA & ANOTHERPLAINTIFFS

VERSUS

MAGU RUTERE & FOUR OTHERS DEFENDANTS

R U L I N G

The parties agreed to argue a Preliminary Objection raised first.

“That the application is bad in law and offends the clear provisions of Civil Procedure Rules and the same ought to be struck out with costs.”

The application dated 8/12/2008 was filed by plaintiff under **Order 2 (1)** and **1 (b) Rule 8** of the **Civil Procedure Rules** seeking the setting aside of the orders made on 3/12/04 dismissing this suit and that this suit be reinstated for hearing.

On the hearing date the defendants filed a preliminary objection. It is submitted that the suit was dismissed on 3/12/2004. The application was filed by the firm of Kanyi Advocates who took over from advocates who were acting for plaintiff at the time the suit was dismissed. They have no locus standi. They have to comply with **Order 3 Rule 9 (a)**.

The second plaintiff’s suit has abated because he died on 27/2/05. It appears that the advocate who was engaged by the plaintiffs abandoned his practice and is no longer in active legal practice. The supporting affidavits show that the applicants did not receive any communication from their advocate and therefore they never came to know of the fate of the suit. As it is the suit was dismissed on 3/12/04 for want of prosecution.

From that day the parties appeared in court on 18/2/09 with this application. The position appears to me that the suit by the second plaintiff has abated. The surviving plaintiff, Njogu Maregwa may proceed with the suit. However, the suit was dismissed for want of prosecution. From what the plaintiff/applicant states the advocate representing him became sick, did not keep the plaintiff informed of the progress of the suit. There is no evidence to the contrary.

The application set aside dismissal is explained and I accept it having been caused no reasons of applicant. I therefore allow the application and grant orders as prayed by the surviving plaintiff. However, the plaintiff shall take a hearing date for the suit within the next 21 days as a matter of urgency.

It is so ordered.

DATED, SIGNED and DELIVERED at Nairobi this 3rd day of November, 2009.

JOYCE N. KHAMINWA

JUDGE