



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS

ELC. CASE NO. 141 OF 2011

JOHN MUSYOKA MUSEMBI (Suing as the legal

representative of the Estate of **NASON**

MUSEMBI MUSOMBA (Deceased).....PLAINTIFF/RESPONDENT

VERSUS

HENRY MULI KISENGA.....DEFENDANT/APPLICANT

AND

PRISCILLA MUSYOKA MUSEMBI.....APPLICANT

RULING

1. In the Notice of Motion dated 29th November, 2019, the Applicant has sought for the following orders:

a) That the Plaintiff herein, John Musyoka Musembi, who died on 8th March, 2019, be substituted with Priscilla Musyoka Musembi.

b) That costs of this Application be in the cause.

2. The Application is supported by the Affidavit of the Applicant who has deponed that the Plaintiff herein, John Musyoka Musembi, who was her husband, died on 8th March, 2019; that she is in the process of petitioning the High Court for a grant of Letters of Administration intestate of the deceased Plaintiff's Estate and that the subject matter in the suit herein is land, and the cause of action herein survives the Plaintiff.

3. The Applicant deponed that she is desirous of continuing with the suit herein; that the law requires that an Application for substitution of a deceased Plaintiff be made before the lapse of one (1) year from the date of the Plaintiff's death and that the Application herein has been made within the timelines required by the law, and is merited.

4. In response, the Defendant deponed that the Applicant lacks capacity to bring the current Application; that the process of substituting the Plaintiff has commenced in Succession Cause No. 609 of 2008 and that the Applicant should await the appointment of the legal representatives of the Plaintiff's Estate in that matter.

5. In her Further Affidavit, the Applicant deponed that she is the legal representative of the deceased's Estate by virtue of a Limited Grant of Letters of Administration Ad Litem dated 22nd July, 2020 and that she filed the Application before the lapse of one (1) year.

6. The Applicant's advocate submitted that the subject matter in this suit is land; that the cause of action herein survives the deceased; that the Plaintiff's death does not therefore extinguish the suit and that this Application was filed on the 2nd December, 2019 before the lapse of one (1) year from the date when the Plaintiff died. It was submitted that this court has unfettered jurisdiction and power to give such orders in the interest of justice.

7. It is not in dispute that the Plaintiff herein died on 8th March, 2019, and that the Applicant obtained Letters of Administration Ad Litem in the Chief Magistrate's Court Succession Cause No. 46 of 2020 on 22nd July, 2020.

8. Order 24, Rules 1 and 3 (2) of the Civil Procedure Rules provide that the death of a Plaintiff or Defendant shall not cause the suit to abate

if the cause of action survives or continues, and that where within one (1) year no Application is made for substitution of the Plaintiff, the suit shall abate so far as the deceased Plaintiff is concerned.

9. The subject matter in this suit is land and the cause of action herein survives the deceased. This Application was filed on 2nd December, 2019 before the lapse of one (1) year since the Plaintiff died. The Applicant has obtained Letters of Administration Ad Litem for the purpose of filing and prosecuting this suit.

10. That being the case, the Application is validly before the court, and the Applicant has the legal mandate to file the current Application, and substitute the deceased Plaintiff.

11. For those reasons, I allow that Application dated 29th November, 2019 as follows:

a) The Plaintiff herein, John Musyoka Musembi, who died on 8th March, 2019, be substituted with Priscilla Musyoka Musembi within twenty one (21) days.

b) The costs of this Application be in the cause.

DATED, SIGNED AND DELIVERED IN MACHAKOS THIS 13TH DAY OF NOVEMBER, 2020.

O. A. ANGOTE

JUDGE