



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS

ELC. CASE NO. 279 OF 2010

RHODA NDINI NZIOKA.....PLAINTIFF

VERSUS

DISTRICT LAND REGISTRAR, MACHAKOS....1ST DEFENDANT

THE HON. ATTORNEY GENERAL.....2ND DEFENDANT

LOIS JOHN KILONZO.....3RD DEFENDANT

THE COMMISSIONER OF LANDS.....4TH DEFENDANT

RULING

1. In the Application dated 11th October, 2018, the Plaintiff is seeking for the following orders:

a. That this Honourable Court be pleased to set aside the order dismissing the suit and revive it.

b. That upon revival of the suit the Plaintiff herein be substituted with Mr. Moses Kyalo Ndini the legal representative of the Plaintiff herein.

c. That upon grant of prayer 2 above the Plaintiff be amended in terms of the draft Amended Plaintiff annexed to this Application.

d. That costs of this Application be provided for.

2. The Application is supported by the Affidavit of the Plaintiff's administrator who has deponed that the Plaintiff died on 19th April, 2013; that her Application dated 27th September, 2013 for substitution was dismissed on the ground that she did not have Letters of Administration and that she was only issued with the Letters of Administration in Machakos Succession Cause No. 420 of 2013 on 16th July, 2018.

3. The Applicant deponed that the court in Succession Cause No. 420 of 2013 held that the issue of whether the Defendant had the suit land registered in his name fraudulently could only be determined by this court and that this suit should be revived to achieve that purpose.

4. The 3rd Defendant filed Grounds of Opposition in which he has averred that this suit did not survive the Plaintiff; that no valid reasons have been offered as to why the Plaintiff's advocate did not attend court and that an Application similar to the current one was filed on 27th September, 2013 and the same was determined. None of the parties filed submissions.

5. The evidence before this court shows that the Plaintiff died on 19th April, 2013. By the time of her death, the Plaintiff had testified and closed her case and the matter was pending Defence hearing.

6. The Plaintiff has produced in evidence the Judgment in High Court Succession Cause No. 420 of 2013 in respect of the Plaintiff's Estate. Indeed, it was not until 16th July, 2018 that the Succession Court granted to the Applicant the Letters of Administration in respect of the Estate of the Plaintiff.

7. The record shows that on 17th May, 2018, this matter was marked as having abated. Order 24 Rule 7 (2) of the Civil Procedure Rules allows a party to apply for the revival of an abated suit or to set aside an order of dismissal upon such terms as to costs or as the court may think fit.

8. The evidence before me shows that the Applicant herein filed Succession Cause No. 420 of 2013 soon after the death of the Plaintiff. Due to the objection raised in the Succession Cause by the 3rd Defendant herein, it was not until the 16th July, 2018 that the court issued to the Applicant with the Grant of Letters of Administration.

9. Indeed, the Judgment of the court in Succession Cause No. 420 of 2013 stated that the issue of whether the registration of the suit land in the name of the 3rd Defendant was registered fraudulently could only be determined in this suit.

10. Considering that the Plaintiff could only be substituted after the finalization of Succession Cause No. 420 of 2013, it follows that the current Application is meritorious. Indeed, the Plaintiff, having closed her case, will be prejudiced if the suit were to collapse due to the long period that the Succession Court took to issue to the Applicant the Letters of Administration. The Applicant in this matter has shown sufficient cause to warrant the revival of the suit, and for substitution of the Plaintiff.

11. For those reasons, I allow the Notice of Motion dated 11th October, 2018 as follows:

- a. The order marking the suit as abated be and is hereby set aside.*
- b. This suit be and is hereby revived and the Plaintiff be substituted by her legal representative.*
- c. The Plaintiff to file an Amended Complaint within fourteen (14) days from today.*
- d. The costs of the Application to be in the cause.*

DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 28TH DAY OF FEBRUARY, 2019.

O.A. ANGOTE

JUDGE