



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

CIVIL SUIT NO. 90 OF 2007

GRACE NGAUTANI (Suing as an Administrator of the Estate of

JUSTUS RUGWARU.....PLAINTIFF

JOSES MUGAMBI JUSTUS.....APPLICANT

-V-

JASON THURANIRA.....1ST DEFENDANT

PS MINISTRY OF LANDS & SETTLEMENT.....2ND DEFENDANT

DIRECTOR OF LANDS ADJ & SETTLEMENT.....3RD DEFENDANT

THE MINISTER OF LANDS & SETTLEMENT.....4TH DEFENDANT

HON ATTORNEY GENERAL.....5TH DEFENDANT

RULING

1. In the Notice of Motion Application dated 8th May 2015 and brought pursuant to the provisions of Sections 1A, 1B, 3,3A and 63 of the Civil Procedure Act and Order 24 Rule 3 of the Civil Procedure Rules, the Applicant seeks to be appointed the Legal Representative of the plaintiff, there be substitution thereof, the suit to be revived and that the same be reinstated for hearing.

2. The grounds in support of the Application are that the plaintiff herein died on 22nd December 2015 and a Legal Representative needs to be appointed since the claim survived the deceased. The applicant has already obtained the requisite Grant of representation.

3. The 1st defendant opposed the application via Grounds of Opposition filed in court on 31st October 2018, contending inter alia that the suit abated on 22nd December 2016, one year after the death of the plaintiff and that on 31st July 2017, the court decreed that the suit be marked as abated due to the death of the plaintiff, hence there was nothing pending for the Applicant to be appointed for.

4. When the matter came up for hearing on 11th February 2019, Mr. Thangicia holding brief for Mr. Ogoti for the 1st defendant requested for more time to file submissions. They were ordered to file the same by close of business that day but this order was not complied with. Counsel for the 2nd to 5th defendants (the Attorney General) contended that he was leaving the matter to court.

5. Briefly, it is submitted for the Applicant that the suit was filed on 23rd August 2007 and the original plaintiff never got a chance to be heard. This plaintiff died on 22nd December 2015 and there arose a need to have a Legal Representative appointed for purposes of substitution to enable the matter to proceed. The family had to procure a death certificate which was issued on 29th February 2016, culminating with the issuance of a Grant on 14th March 2018.

6. It was further submitted that the matter involves family land which was registered in the names of the Applicant's father but was fraudulently transferred to the 1st defendant in unclear circumstances.

7. It was further submitted that this court has discretion to reinstate the suit even after the same had abated. For this proposition, the Applicant relied on the case of **SONI V RS MOHAN DAIRY 1968 EA. 58.**

8. I have carefully considered this application, the Applicant's submissions and the authority in support thereof. **Order 24 Rule 3 of the Civil procedure Act** provides as follows:

“(1) Where one of two or more plaintiffs dies and the cause of action does not survive or continue to the surviving plaintiff or plaintiffs alone, or a sole plaintiff or sole surviving plaintiff dies and the cause of action survives or continues, the court, on an application made in that behalf, shall cause the legal representative of the deceased plaintiff to be made a party and shall proceed with the suit.

(2) 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:

Provided the court may, for good reason on application, extend the time.

9. Rule 7 thereof further provides as follows;

“(1) Where a suit abates or is dismissed under this Order, no fresh suit shall be brought on the same cause of action.

(2) The plaintiff or the person claiming to be the legal representative of a deceased plaintiff may apply for an order to revive a suit which has abated or to set aside an order of dismissal; and, if it is proved that he was prevented by any sufficient cause from continuing the suit, the court shall revive the suit or set aside such dismissal upon such terms as to costs or otherwise as it thinks fit”.

10. It is evident that Rule 7 (*supra*) clothes this court with wide discretion to revive a suit or otherwise provided an Applicant demonstrates as in the instant case that he was prevented by any sufficient cause from continuing with the suit. The Applicant in this case contended that it took time to obtain a Grant which was eventually issued on 14th March 2018 in which the Applicant was appointed the Legal Representative of the original plaintiff. I have seen a copy of death certificate which bears the date of issue as 29.2.2016, which means that the filing of the miscellaneous succession cause could only have taken place thereafter. The grant itself was obtained on 14.3.2018. It is evident that very minimal effort was made by the original plaintiff to have the suit prosecuted during her lifetime. From year 2007 to 2014, nothing happened though it is alleged that the file had been lost (as per court's records). However, the family of deceased have demonstrated a keen interest to have the matter heard, thus sufficient cause has been shown.

11. The Court of Appeal in the case of **The Hon. Attorney General v The Law Society of Kenya & Another – Civil Appeal (Application) No. 133 of 2011** observed as follows as to the meaning of sufficient cause:

“Sufficient cause or good cause in law means:-

‘The burden placed on a litigant (usually by court rule or order) to show why a request should be granted or an action excused.’ See Black's Law Dictionary, 9th Edition, page 251.

Sufficient cause must therefore be rational, plausible, logical, convincing, reasonable and truthful. It should not be an explanation that leaves doubt in a Judge's mind. The explanation should not leave unexplained gaps in the sequence of events.”

12. Taking into totality all the circumstances in this case I find that the Applicant has made a sufficient case to warrant the issuance of the orders that he is seeking. Accordingly, the Notice of Motion Application dated 8th May 2018, is allowed and the plaintiff's suit is hereby revived as against the defendants with a further order that the Applicant **Joses Mugambi Justus** be substituted as the plaintiff herein, in place of the deceased plaintiff.

13. Since this is a 2007 matter, the plaintiff shall cause the same to be listed down for hearing within four months from the date of this ruling and in default the suit shall stand as abated.

14. The costs of this application shall abide the outcome of the main suit.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS DAY OF 27TH MARCH, 2019 IN THE PRESENCE OF:-

C/A: Kananu

Muthamia for plaintiff

Applicant Joses Mugambi

HON. LUCY. N. MBUGUA

ELC JUDGE