



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT MOMBASA**

**ELC NO. 306 OF 2015**

**1. ADAM SAID JUMBE**

**2. MERCELENE KISHAGA BULUMA.....PLAINTIFFS**

**VERSUS**

**PRESITONE MWAKIO JUMBE.....DEFENDANT**

**RULING**

1. Before me for determination is a preliminary objection raised by the defendant to the 2<sup>nd</sup> plaintiff's notice of Motion dated 6<sup>th</sup> February, 2018. The said preliminary objection is worded as follows:

***“That in the absence of a grant of representation the 2<sup>nd</sup> plaintiff has no locus standi to litigate the suit herein on behalf of the estate of the deceased Adam Said Jumbe the 1<sup>st</sup> Plaintiff. ”***

2. In the application dated 6<sup>th</sup> February, 2018, the 2<sup>nd</sup> Plaintiff seeks leave to amend the plaint so as to delete the 1<sup>st</sup> plaintiff who is deceased. The 1<sup>st</sup> plaintiff is said to have died on 26/10/13.

3. The preliminary objection was canvassed by way of written submissions. The defendant filed his submissions on 11<sup>th</sup> February 2019 in which it is submitted that whereas the suit survives the 1<sup>st</sup> Plaintiff's death and whereas the 2<sup>nd</sup> Plaintiff is at liberty to prosecute the same to its conclusion, the 2<sup>nd</sup> Plaintiff cannot plead on behalf of the deceased Plaintiff in the absence of letters of administration.

4. The 2<sup>nd</sup> Plaintiff filed her submissions on 11<sup>th</sup> January 2019 in which she submits inter alia, that in the application dated 6<sup>th</sup> February, 2018, the 2<sup>nd</sup> Plaintiff is only seeking to be allowed to continue with the suit as the cause of action survives the death of the 1<sup>st</sup> Plaintiff. The 2<sup>nd</sup> Plaintiff further submits that he has no intention whatsoever to litigate the suit on behalf of the deceased plaintiff.

5. I have considered the Notice of preliminary objection, filed submissions and the authorities cited. In the plaint, the plaintiffs sought inter alia, a declaration that all that piece or parcel of land known as **PLOT NO.CHAWIA/WUSI-KAYA/240** is ancestral land belonging to the plaintiffs and the defendant and that the defendant holds the same in trust for the plaintiffs. The plaintiffs further seek a rectification of the register to include the names of the plaintiffs as owners in common with the defendants.

6. It is not in dispute that the 1<sup>st</sup> Plaintiff is now deceased. Order 24 Rule 2 of the Civil Procedure Rules provides the procedure where one of several plaintiffs dies and right to sue survives. It states as follows:

**2. where there are more plaintiffs or defendants than one, and any one of them dies, and where the cause of action survives or continues to the surviving plaintiff or plaintiffs alone or against the surviving defendant or defendants alone, the court shall cause an entry to that effect to be made on the record, and the suit shall proceed at the instance of the surviving plaintiff or plaintiffs or against the surviving defendant or defendants**

7. It is clear from the above provision that where there are more plaintiffs than one and any one dies, as in the instant case, and the cause of action survives or continues to the surviving plaintiff, all that the court is required is to cause an entry to be made on the record and the suit shall proceed at the instance of the surviving plaintiff. In his submissions, the defendant admits that the cause of action herein survives the 1<sup>st</sup> Plaintiff's death and that the 2<sup>nd</sup> plaintiff is at liberty to prosecute the same to its natural conclusion.

8. Accordingly, I find and hold that the Preliminary Objection lacks merit and the same is dismissed with costs.

**DATED, SIGNED and DELIVERED at MOMBASA this 18<sup>th</sup> day of March 2019.**

**C.K. YANO**

**JUDGE**

**IN THE PRESENCE OF:**

Mrs. Kabole for Plaintiff/Respondent

No appearance for defendant

Yumna Court Assistant

**C.K. YANO**

**JUDGE**