



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT OF KENYA**

**AT EMBU**

**E.L.C. CASE NO. 170 OF 2015**

**(FORMERLY KERUGOYA E.L.C. 595 OF 2013)**

**JOHN MUGO NJERU.....PLAINTIFF**

**VERSUS**

**DAUDI NGARI NJIRU.....DEFENDANT**

**AMBROSE KITHAKA NJERU.....APPLICANT**

**RULING**

1. By a notice of motion dated 24<sup>th</sup> September 2018 brought under **Order 24 Rule 3 and Order 50 Rule 1 of the Civil Procedure Rules, 2010** (hereinafter *the Rules*) and all enabling provisions of law, the Applicant sought the following orders;

a. *The originating summons dated 22<sup>nd</sup> May 2013 has abated.*

b. *Costs of this application be provided for.*

2. The said application was based upon the grounds set out on the face of the motion and supported by the Applicant's own affidavit sworn on 24<sup>th</sup> September 2018. In a nutshell, the Applicant contended that the suit against the Defendant (his late father) had abated by operation of law since the Plaintiff had failed to apply for his substitution within one year from the date of his death.

3. The Applicant annexed to his supporting affidavit a copy of the Defendant's death certificate indicating that he died on 12<sup>th</sup> August 2017. He also exhibited a copy of a limited grant *ad litem* issued to him on 23<sup>rd</sup> January 2018 for the purpose of defending this suit.

4. The Plaintiff filed a replying affidavit sworn on 7<sup>th</sup> November 2018 in opposition to the said application. He stated that he was completely unaware of the Defendant's death all along and that he only came to learn of it upon service of the instant application. The Plaintiff contended that it was the Applicant's and not his duty to apply for substitution under **Order 24 Rule 4 of the Rules**.

5. The Plaintiff also filed grounds of opposition dated 7<sup>th</sup> November 2018 in opposition to the said application. He contended that the Applicant had relied upon the wrong provisions of the law; that it was misconceived, bad in law and an abuse of the court process; and that the Applicant as administrator of the estate of the Defendant was best placed to seek revival of the suit and substitution of the Defendant.

6. When the said application was listed for hearing on 22<sup>nd</sup> November 2018 Mr. Gachuba for the Applicant prosecuted it orally on the basis of the grounds set out in the notice of motion and the supporting affidavit. Ms. Maina, who appeared for the Plaintiff, opposed it on the basis of the grounds of opposition and the replying affidavit on record.

7. The court has considered the said application and the grounds of opposition and the replying affidavit in opposition thereto. The court has also considered the respective oral submissions of the parties. The court is of the view that the notice of motion dated 24<sup>th</sup> September 2018 should fail for the following reasons.

8. First, the Applicant has *no locus standi* to make the instant application or to take any other steps in the suit without being joined as a party in the first instance. At this juncture, he is merely a stranger and busy body who is intermeddling in other people's proceedings. Since he has the capacity by virtue of the limited grant *ad litem* issued to him to apply to be joined as a party in this suit, he cannot be heard whilst an outsider. A suit is a solemn legal process which is owned by the parties.

9. Second, the court finds the instant application to be mischievous and an abuse of the court process. The Applicant knew all along that his father was deceased. He applied for and was granted a limited grant *ad litem* limited to the purpose of conducting 3 pending suits in which the Defendant was a party. The instant suit was amongst the 3 suits mentioned in the grant. The grant was made on 23<sup>rd</sup> January 2018.

10. It would appear that the Applicant did not act on the limited grant. He did not notify the Plaintiff or the court that the Defendant was deceased and that a limited grant had been issued to him. He conveniently waited for one year to lapse from the date his father died. He then filed the instant application for a declaration that the suit against his father had abated. That is clearly an abuse of the court process.

11. The upshot of the foregoing is that the court finds no merit in the notice of motion dated 24<sup>th</sup> September 2018. The same is accordingly dismissed with costs to be borne by the Applicant personally. The costs are assessed at Ksh.15,000/- to be paid within 30 days from the date of the ruling.

12. Now that the Plaintiff is aware of the demise of the Defendant and of the person who is holding a limited grant *ad litem* he may take the necessary steps under **Order 24 of the Rules** to enable him progress his suit. The Plaintiff does not have to wait for the administrator to make such application.

13. It is so ordered.

**RULING DATED, SIGNED and DELIVERED in open court at EMBU this 23<sup>RD</sup> day of MAY, 2019**

**In the presence of Ms Mureithi holding brief for A.P. Kariithi for the Plaintiff and in the absence of the Defendant and the Applicant.**

**Court Assistant Mr. Muinde**

**Y.M. ANGIMA**

**JUDGE**

**23.05.19**