



**REPUBLIC OF KENYA**

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

**AT NAKURU**

**ELC NO.187 OF 2014**

**EBRAHIM ATHUMANI MWANGI.....PLAINTIFF**

**VERSUS**

**ABDALLA TAIRARA GODORO.....1<sup>ST</sup> DEFENDANT**

**HERODHO SHEIKH BIN SHEIKH....2<sup>ND</sup> DEFENDANT**

**RULING**

***(Application for substitution of deceased plaintiff; application allowed)***

1. The application before me is that dated 20 February 2019 brought pursuant inter alia to the provisions of Order 24 Rules 3(1) and 3(2) of the Civil Procedure Rules. The application seeks orders that the applicant do substitute the deceased plaintiff.

2. The suit itself was commenced by the plaintiff through a plaint which was filed on 18 May 2010. In the suit, the plaintiff averred that he is the registered proprietor of the land parcel Dundori/Lanet Block 5/384 (New Gakoe). It is averred that the plaintiff wished to sell the property and thus left the title document with his advocate, one Mr. Mohammed who then handed over the same to the 1<sup>st</sup> defendant, a person known to both the plaintiff and Mr. Mohammed, to scout for buyers. The plaintiff later discovered that the suit land had been transferred to the 2<sup>nd</sup> defendant and it is his position that this was done fraudulently and through collusion between the 1<sup>st</sup> defendant and the 2<sup>nd</sup> defendant. In the suit he wished to have an orders that the title of the 2<sup>nd</sup> defendant be cancelled and the same to revert back to him.

3. In this application, it is averred that the plaintiff died on 20 March 2018 and that the applicant holds a grant ad litem issued in Nairobi Kadhi's Court Ad Litem Cause No. 5 of 2019. On the day of the hearing of the application, there was no appearance on the part of counsel for the 1<sup>st</sup> and 2<sup>nd</sup> defendants and I take it that they have not seen it necessary to oppose the application. On my part, I see no reason why the application should not be allowed. I have seen a copy of the grant ad litem which is annexed to the supporting affidavit and I have no reason to doubt that the applicant has been appointed as administrator on behalf of the estate of the deceased plaintiff for purposes of pursuing this suit. It is also clear to me that the cause of action survives the death of the plaintiff and the suit can be continued for the benefit of his estate.

4. I therefore allow this application. I allow the substitution of the deceased plaintiff with the applicant and the suit be continued on that basis.

5. I make no orders as to costs.

6. Orders accordingly.

**Dated, signed and delivered in open court at Nakuru this 20<sup>th</sup> day of June 2019.**

**JUSTICE MUNYAO SILA**

**ENVIRONMENT & LAND COURT AT NAKURU**

**In presence of : -**

Mr. Maiyo holding brief for Mr. Kasim for the applicants.

No appearance for the respondents.

Court Assistants: Nelima Janepher /Patrick Kemboi.

**JUSTICE MUNYAO SILA**

**ENVIRONMENT & LAND COURT AT NAKURU**