



**REPUBLIC OF KENYA**

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

**AT NAKURU**

**ELC NO.346 OF 2013**

**PETER MUTURI & OTHERS**

**(Suing on behalf of Mia Moja Self Help Group).....PLAINTIFF**

**VERSUS**

**LEAH WANJIRU GACHERU.....DEFENDANT**

**RULING**

***(Application for substitution of deceased defendant and for revival of abated suit; application allowed)***

1. The application before me is that dated 29 May 2019 filed by the plaintiff. The application is brought pursuant to the provisions of Order 24 Rule 1 and 4, and Order 49 Rule 7 of the Civil Procedure Rules, 2010, and seeks orders that the deceased defendant be substituted with four persons, namely Denis Maina Kiratu, Agela Wanja Maina, Ann Waceke Makori and Joseph Mwangi Kiratu, who are said to hold letters of administration in respect of her estate. The applicant also seeks to have orders that this suit be revived for the same has abated.

2. The background of the matter is that this suit was commenced by way of a plaint which was filed on 11 September 2012. The plaintiffs, who are representatives of Mia Moja Self Help Group, sued the deceased, Leah Wanjiru Gacheru, claiming that through an agreement between themselves and one Zacharia Gacheru Kiratu they purchased the land parcel Nakuru Municipality Block 17/86. It is averred that at the time of purchase, which is sometimes in the year 2004, the vendor only had an allotment letter to the suit land and that they made payments for purposes of processing title. The vendor however died in the year 2011 and it is claimed that despite making verbal assurances that she would not take title to the suit land, the deceased defendant did procure a title in her name in June 2012. In the suit, the applicants wish to have an order of specific performance to carve out one acre out of the suit land and a cancellation of title of the deceased defendant. The defendant filed a defence to oppose the suit. Contrary to the averments that the suit is partly heard, the fact of the matter is that the case has never proceeded for hearing.

3. To the supporting affidavit, the applicants have averred that upon the death of the defendant, they filed a citation to compel the taking of letters of administration in respect of the estate of the deceased through Nakuru High Court Succession Cause No. 2 of 2018. Letters of administration were eventually issued to the four persons sought to substitute the deceased through Nakuru High Court Succession Cause No. 29 of 2018. I do note that the grant of letters of administration was issued on 21 October 2018.

4. The deceased died on 2 November 2017 meaning that this suit abated on 2 November 2018. I am however satisfied that the delay in filing this application is explained as I can see for myself that the applicants were labouring in the citation cause to have an administrator appointed in respect of the estate of the deceased so that they can continue their suit. I have no issue with reviving the abated suit. I also have no problem with substituting the deceased defendant with the four named persons since I can see that they jointly hold letters of administration in respect of the estate of the deceased.

5. The application is therefore allowed. There will be no orders as to costs.

6. Orders accordingly.

**Dated, signed and delivered in open court at Nakuru this 30<sup>th</sup> day of July 2019.**

**JUSTICE MUNYAO SILA**

**ENVIRONMENT & LAND COURT AT NAKURU**

**In presence of : -**

Mr. R.K. Langat holding brief for Mr. Waiganjo for the respondent.

No appearance on the part of M/s Githui & Company for the applicant.

Court Assistants- Nelima Janepher /Patrick Kemboi.

**JUSTICE MUNYAO SILA**

**ENVIRONMENT & LAND COURT AT NAKURU**