



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

ELC CASE NO. 38 OF 2015

SILVANA KARIMI CHABARI

DOMINICA MUTHONI M'IBARI

MAGDALENE MWARI MWAJA

MWAROMO MUGIRA M'MUGAMBI.....PLAINTIFFS

VERSUS

JOHN MUTHURI (Administrator of the estate of

M'ANANUA M'ITERE)DEFENDANT/RESPONDENT

RULING

1. This ruling is in respect of the application made orally by Mr. Thangicia (counsel for defendant) on 30.9.2019 to have the suit marked as ABATED. It was argued for defendant that in March 2019, the plaintiff's side had sought leave to file an application to revive the suit but apparently, they didn't even file the petition for the grant.

2. M/S Njenga for the plaintiff requested the court to be given a final chance as plaintiff's are very old. They sought for 15 days.

3. I have considered all the arguments raised before me. I find that the issue of the death of the defendant was first raised on 11.2.2019 by defence counsel who had then sought to have the suit marked as abated. The court gave a ruling observing that at no time had the court ever been informed of the death of defendant until that day. I therefore declined to mark the case as abated but stated that defence side was at liberty to move the court formerly with such an application. No such formal application was filed. The application to have the case marked as abated was again made orally on 30.9.2019.

4. Whereas it was quite in order for the defence counsel to make the oral application, I do find that he was still under an obligation to assist the court to arrive at a just determination of the matter. I find it expedient to pose the question "*When did the defence counsel learn of the death of defendant?*" The defence counsel availed a copy of the death certificate of defendant on 30.9.2019. This document indicates that deceased died on 18.1.2016 which is more than three years ago. For how long has the counsel been having the death certificate?

5. In the case of **Priscilla Ndubi & another vs Gerishon Gatobu, Meru H.C.C Succession cause no. 720 of 2013, Gikonyo J**, stated that;

"In any Judicial proceedings, parties must make full disclosures to the court of all material facts to the case..... This General rule of law emphasizes utmost good faith (uberimae fidei) from parties who take out or are subject of the court proceedings. The said responsibility is part of justice itself. Accordingly, non-disclosure of material facts undermines justice"

6. Whoever is giving instructions to Mr. Thangicia is not the defendant! Seeing that defendant died few years ago. However, this fact of death has been known to that family. Even when the matter was coming up for pre-trial on 26.7.2018 nothing was mentioned about the death of defendant.

7. The court takes cognizance of the fact that substituting a rival party in case of death is an onerous task as the family of deceased may be economical with crucial information such as who is the proper person to acquire the grant. This has been clearly manifested in this case where the death of deceased was kept under wraps for 3 years and even the death certificate was only shown to the court on 30.9.2019.

8. Article 159 (2) of the constitution mandates this court to dispense justice without undue regard to procedural technicalities. Thus, I am now inclined to make the following orders:

(1) That the plaintiff/ applicants are given two months to demonstrate that they have filed proceedings in the relevant court to get the grant in respect of the estate of defendant.

(2) In the event that no such proceedings have been filed then this suit SHALL STAND AS ABATED.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS 13TH DAY OF NOVEMBER, 2019 IN THE PRESENCE OF:-

C/A: Kananu

Muthomi hoding brief for Mwanzia for plaintiff

Thangicia for defendants (deceased)

1st to 3rd applicants

HON. LUCY. N. MBUGUA

ELC JUDGE