

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAKURU

ELC NO. 38 OF 2013

LUCY CHEPKEMOI MOSONIK (suing as the Legal Administrator of the Estate of ANTONY KIPRONO MOSONIK (DECEASED)).....PLAINTIFF

VERSUS

KHADIJA HAJI AHMED1ST DEFENDANT

FATUMA HERSI ALI.....2ND DEFENDANT

RULING

(Application for substitution; application allowed).

1. The application before me is that dated 7 March 2017 (although it may have been meant 7 November 2017) filed by two persons, namely Zainab Abdi and Zainab Umar Abdi. The application is brought pursuant to the provisions of Order 24 of the Civil Procedure Rules. The applicants wish to be substituted for the named defendants herein, Khadija Haji Ahmed and Fatuma Hersi Ali (deceased). It is said that Khadija Haji Ahmed died on 9 January 2009, whereas Fatuma Hersi Ali, died on 16 August 2017.

2. By way of background, this suit was commenced through an Originating Summons filed on 23 September 2011. The applicant in the Originating Summons (whom for ease of reference I will refer to as the plaintiff), filed this suit on behalf of the estate of Antony Kiprono Mosonik (deceased) wishing to be declared to have obtained title by way of adverse possession to the land parcel Dundori/Mugwathi Block 2/311. The suit was resisted through a replying affidavit filed by Fatuma Hersi Ali on 14 November 2011.

3. Through this application it does appear that the 1st defendant, had actually died by the time this suit was filed. The 2nd defendant was however alive although she is now deceased. Although there could be a technicality in the suit against the 1st defendant, in the interests of justice and so that all parties can have an opportunity to present their respective cases, I do allow this application and do permit the two applicants to come on record on behalf of the deceased parties. In essence, I do allow the application for substitution and there will be no orders as to costs.

4. It is so ordered.

Dated, signed and delivered in open court at Nakuru this 14TH day of February 2018.

JUSTICE MUNYAO SILA

ENVIRONMENT & LAND COURT AT NAKURU

In presence of :-

No appearance on the part of M/s Ochieng Gai & Co. Advocates for the defendants/applicants.

No appearance on the part of M/s Mirugi Kariuki & Co. Advocates for the plaintiff/respondent.

Court Assistant: Nelima Janepher.

JUSTICE MUNYAO SILA

ENVIRONMENT & LAND COURT AT NAKURU