



**REPUBLIC OF KENYA**

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

**AT NAKURU**

**HCC NO.317 OF 2012**

**JOSEPH KIMANI NGANGA.....PLAINTIFF**

**VERSUS**

**FATUMA HERSI ALL.....DEFENDANT**

**RULING**

***(Application to substitute a deceased defendant; application allowed).***

1. The application before me is that dated 7 November 2017 filed by one Zainab Umar Abdi, under the provisions of Order 24 of the Civil Procedure Rules. The applicant wishes to be enjoined in this suit in place of the defendant, Fatuma Hersi Ali (deceased) who is said to have died on 16 August 2017.

2. By way of background, the suit itself was commenced through a plaint which was filed on 28 August 2012. In the plaint, the plaintiff pleaded that he is the owner of the land parcel Dundori/Mugwathi Block 2/168 having purchased it in the year 1982. He pleaded that the said land was transferred to him and he has been in possession since the year 1984. He pleaded that sometimes in the year 1997, he learnt that the deceased had obtained title to the same land, which title he contended was fraudulently obtained. In the suit, he has inter alia asked for cancellation of the title held by the deceased.

3. The deceased filed a defence and counterclaim. She basically asserted that she is the one entitled to hold title to the suit land and asked for an order of eviction of the plaintiff.

4. The applicant has annexed to her supporting affidavit a Certificate of Death of the original defendant which shows that she died on 16 August 2017. She has also annexed a Grant of Letters of Administration ad litem granted in her favour.

5. The application is not opposed and on my part I see no reason to decline it. The cause of action which is over land, survives the death of the deceased, for her estate is entitled to pursue the said land. The application has also been filed within one year of death before the suit abates. I have also seen that the applicant holds letters of administration ad litem for purposes of filing or defending a suit or representing a suit on behalf of the estate of the deceased.

6. I do hereby allow the application and order that Zainab Umar Abdi be enjoined to this suit in place of the deceased defendant and that she continue the suit on behalf of the estate of the deceased defendant.

7. It is so ordered.

**Dated, signed and delivered in open court at Nakuru this 8th day of February 2018.**

**JUSTICE MUNYAO SILA**

**ENVIRONMENT & LAND COURT AT NAKURU**

**In presence of :-**

Mr. Ochieng Gai for the applicant.

No appearance on the part of M/s Ikua Mwangi & Co. Advocates for the plaintiff.

Court Assistant : Nelima Janepher.

**JUSTICE MUNYAO SILA**

**ENVIRONMENT & LAND COURT AT NAKURU**