

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC CASE NO. 368 of 2009

YASMIN EASLEY.....1ST PLAINTIFF

EUGENE LESLIE ANTHONY OSSEWE2ND PLAINTIFF

VERSUS

HASSAN HAMED.....1ST DEFENDANT

DUBAI BANK (K) LIMITED (IN LIQUIDATION).....2ND DEFENDANT

RULING

Through the application dated 19/7/2016, the Plaintiffs seek leave to substitute the 2nd Defendant, which is under receivership, with Kenya Deposit Insurance Corporation (KDIC) which was appointed as its receiver manager or liquidator. In addition, the 1st Plaintiff seeks to have the 2nd Plaintiff struck off these proceedings. The 1st Plaintiff seeks to amend his plaint to reflect this new position.

The application is premised on the fact that the 2nd plaintiff died and the 2nd Defendant was placed under statutory management by the Central Bank of Kenya. The Plaintiff argues that the proposed amendments to the suit are necessary for the proper determination of the issues in dispute. The application is supported by the Affidavit of the Plaintiffs' counsel to which a copy of the death certificate confirming that the 2nd Plaintiff died on 16/7/2015 is attached as well as a draft Further Amended Plaintiff.

The Plaintiffs filed this suit on 28/7/2009 challenging the transfer and mortgage of L.R. Number 330/560 (original number 330/27/1) situated in Lavington, Nairobi, to the 1st and 2nd Defendants respectively.

Rule 2 of Order 24 of the Civil Procedure Rules provides that where there one of the Plaintiffs dies and the cause of action continues to the surviving plaintiff, the court shall cause an entry to that effect to be made on the record, and the suit shall proceed at the instance of the surviving plaintiff.

The court allows the 1st Plaintiff's prayer to have the name of the 2nd Plaintiff struck off these proceedings so that he can continue with the matter.

The Kenya Deposit Insurance Act was enacted in 2012 to provide for the establishment of a deposit insurance scheme and the receivership and liquidation of deposit taking institutions. Section 56 (2) of this Act stipulates that no injunction may be brought or any other action or civil proceeding may be commenced or continued against the institution or in respect of its assets without the sanction of the Court. The Plaintiff therefore requires the court's leave to continue with these proceedings against the 2nd Defendant.

The court allows the application and grants the orders sought in the application dated 19/7/2016. The Plaintiff is directed to file and serve his Further Amended Plaintiff within 14 days of today failing which the suit shall stand dismissed. Costs shall be in the cause.

Dated and delivered at Nairobi this 5th day of February 2018.

K. BOR

JUDGE

In the presence of: -

Ms. Nyaanga holding brief for Mrs. Maangi for the Plaintiff

No appearance for the Defendants

Mr. V. Owuor- Court Assistant