



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS**

**ELC. CASE NO.86 OF 2005**

**AMOS MUNYAO MUKUA.....PLAINTIFF**

**VERSUS**

**J. MUTUA MUNYAO.....1<sup>ST</sup> DEFENDANT**

**PETER MUKUA MUNYAO.....2<sup>ND</sup> DEFENDANT**

**MUIA MUNYAO.....3<sup>RD</sup> DEFENDANT**

**MUTISYA MUNYAO.....4<sup>TH</sup> DEFENDANT**

**RULING**

1. In the Notice of Motion dated 24<sup>th</sup> May, 2017, the Plaintiff is seeking for the following orders:

***a. That this suit be reinstated and fixed for hearing.***

***b. That the costs of this Application be in the cause.***

2. The Application is premised on the grounds that the suit was dismissed for non-attendance; that counsel for the Plaintiff was attending to another matter before Kemei J. and that by the time counsel proceeded to this court, the matter had already been dismissed for non-attendance.

3. According to the Affidavit of the Plaintiff's advocate the Plaintiff herein passed on after tendering evidence.

4. The Defendants have not opposed the Application.

5. The record shows that the suit was dismissed on 24<sup>th</sup> May, 2017 for want of prosecution.

6. This suit was slated for hearing of a notice to show cause why it should not be dismissed for want of prosecution on 30<sup>th</sup> March, 2017.

7. On the said date, the Plaintiff's advocate informed the court that the Plaintiff had passed on. The Plaintiff's counsel was directed by the court to file an Application to substitute the Plaintiff within thirty one (31) days. The court fixed the matter for hearing on 24<sup>th</sup> May, 2017.

8. On the said date, neither the Plaintiff nor the Defendants' advocates were in court. Indeed, the record shows that the file was placed aside until 10:30a.m, and when the advocates did not appeared, the court dismissed the matter.

9. The Plaintiff's counsel had deponed that when the matter came up for hearing, he was in the High Court. There is no evidence before me to show that the Plaintiff's advocate had a matter on the same day this matter was coming up in the High Court.

10. Even if the Plaintiff's advocate was in the High Court on 24<sup>th</sup> May, 2017, this file was placed aside until 10:30a.m. By that time, counsel would have mentioned his matter in the High Court and then attended to this matter.

11. In any event, the Plaintiff's advocate did not comply with the orders of the court to file an Application substituting the Plaintiff within thirty one (31) days. Considering that the Plaintiff died on 10<sup>th</sup> September, 2015, the suit has since abated.

12. I therefore dismiss the Application dated 24<sup>th</sup> May, 2017 with no order as to costs.

13. The suit stands dismissed.

**DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 2<sup>ND</sup> DAY OF MARCH, 2018.**

**O.A. ANGOTE**

**JUDGE**