



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MERU

ELC CASE NO. 68 OF 1996

JOHN KIRUKI MARETE.....PLAINTIFF

VERSUS

RUCHUGO MUNYARI.....DEFENDANT

RULING

1. In the application dated 16.3.2018, applicant seeks the following orders

(i) Spent.

(ii) That there be a declaration that the cause of action herein survives the deceased plaintiff and deceased defendant and the suit be revived for determination.

(iii) That the legal representative of the deceased plaintiff, one BENSON KIREMA KIRUKI be made a party in this suit in place of the deceased plaintiff.

(iv) That the administrator of the estate of the deceased defendant, one SAMSON MUTHURI RUCHUGO be made a party in this suit in place of the deceased defendant.

2. The background to this matter is that both the original plaintiff and defendant are dead. Plaintiff died on 13.5.2011 while defendant died in 2009.

3. Applicant avers that this suit has never been determined on its merits and it therefore remains undetermined. He further avers that he is desirous of pursuing the proceedings, herein as a son and legal representative of the deceased.

4. I have keenly perused the records of this file. This is one of the oldest matters in the station, the same having been filed in 1996.

5. The matter was listed for notice to show cause on 6.7.2015 but on that day, the court was informed that one Benson Kirema (the present applicant) was desirous of pursuing the case by pursuing the issue of taking out letters of administration in respect of the estate of deceased defendant.

6. The court indulged the plaintiff's side and directed that matter be mentioned before the deputy registrar on 3.9.2015 to confirm progress made on issue of limited grant.

7. On 3.9.2015 the matter was mentioned before the deputy Registrar, again the court was informed that plaintiff's son was ready to take over the matter and would file the application for substitution. Nothing happened until almost two years thereafter when the court issued a hearing notice for 3.5.2017. Mr. Kaimba appeared for plaintiff and requested for file to be put aside. He didn't re-appear. The matter was hence dismissed. No plausible or any explanation has been advanced as to why plaintiffs' counsel requested the file to be put aside only for him to disappear. Further, no explanation has been advanced as to why the matter stayed in limbo since 3.9.2015.

8. Considering the age of this case and keeping in mind that since 1.12.09 it is the court which has attempted to keep the file active, then I disallow the application dated 16.3.2018. The application is dismissed. This file is marked as closed and is to be taken to the archives.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS DAY OF 25th APRIL, 2018

IN THE PRESENCE OF:-

Court Assistant: Janet/Galgalo

Miss Nyaga for applicant

Respondent absent

HON. LUCY. N. MBUGUA

ELC JUDGE