



**REPUBLIC OF KENYA**

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

**ELCSUIT NO. 48 OF 2011**

**OCHONG' OKELO.....PLAINTIFF**

**VERSUS**

**JUDY AKINYI ODUOR AGUKA.....1ST DEFENDANT**

**LAWRENCE ODUOR AGUKA.....2ND DEFENDANT**

**AND**

**DAVID KARANJA KARAU.....1ST INTERESTED PARTY**

**GEORGE NJUGUNA.....2ND INTERESTED PARTY**

**DR. JOHN KABUTHA MUGO.....3RD INTERESTED PARTY**

**SARAH JEROP RUTO.....4TH INTERESTED PARTY**

**MUTHOGA NGERA.....5TH INTERESTED PARTY**

**ROBERT WILLIAMS.....6TH INTERESTED PARTY**

**PAULINE NJERI WILLIAMS.....7TH INTERESTED PARTY**

**JOHN AUBREY CHARLES HERBERT.....8TH INTERESTED PARTY**

**JOHN MURIMI NJOKA.....9TH INTERESTED PARTY**

**JOCELYN WANJIKU MURAYA.....10TH INTERESTED PARTY**

**WALLACE NGUGI MBUGUA.....11TH INTERESTED PARTY**

**MARY MUGURE NGUGI.....12TH INTERESTED PARTY**

**DR. GATHAIYA JUMBI.....13TH INTERESTED PARTY**

**REGISTRAR OF TITLES.....14TH INTERESTED PARTY**

**HONOURABLE ATTORNEY GENERAL.....15TH INTERESTED PARTY**

**RULING**

What I have before me are two applications brought by the Defendants and the 1<sup>st</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup>, 9<sup>th</sup>, 10<sup>th</sup> and 13<sup>th</sup> interested parties. The defendant's application is dated 12<sup>th</sup> April, 2017. It seeks the dismissal of the suit for want of prosecution. In the alternative, it seeks the discharge and setting aside of the orders of injunction that were made infavour of the Plaintiff on 30<sup>th</sup> April, 2012. On the other hand, the interested parties' application is seeking a declaration that this suit has abated and that the same is not pending. The interested parties are also seeking a declaration that the injunctive orders that were granted by the court infavour of the plaintiff on 30<sup>th</sup> April, 2012 have lapsed and should be discharged.

The two applications were argued together before me on 31<sup>st</sup> July, 2017. I have considered the applications together with the affidavits filed in support thereof. I have also considered the submissions that were made before me by the advocates for the parties and the authorities that were cited in support thereof. The Plaintiff filed this suit against the defendants on 9<sup>th</sup> February, 2011. The interested parties were subsequently added to the suit. On 30<sup>th</sup> April 2012, the court granted orders for the maintenance of status quo in relation to the suit properties. The said orders restrained all the parties from alienating the suit properties and from carrying out any further construction thereon pending the hearing and determination of the suit herein.

When the suit came up for hearing on 29<sup>th</sup> June, 2016 the Plaintiff's advocate informed the court that the plaintiff had died in May, 2016. The Plaintiff's advocate sought adjournment to enable him apply for substitution of the Plaintiff with his legal representative. As at 16<sup>th</sup> June, 2017 when the applications before me were filed, no application had been made for the substitution of the Plaintiff with his legal representative. According to the death and funeral announcement that was carried in the Daily Nation Newspaper of 27<sup>th</sup> May, 2016, the Plaintiff was buried on 11<sup>th</sup> June, 2016. Under Order 24 Rule 3(1) and (2) of the Civil Procedure Rules, the legal representative of the Plaintiff should have made an application within one (1) year (which should have been by the end of May, 2017) to substitute the deceased Plaintiff.

The application for substitution was not made within one year and had not been made as at the time the applications before me were argued on 31<sup>st</sup> July, 2017. Order 24 Rule 3(2) of the Civil Procedure Rules provides that when an application for substitution of a sole plaintiff is not made within one year, the suit abates. It was not contested at the hearing of the applications before me that this suit has abated. What was contested is whether the orders sought by the applicants can be granted in a suit that has abated.

The authorities that were cited before me are unanimous that when a suit has abated, it ceases to exist. Such a suit cannot be tried. I am in agreement with the former advocate for the deceased Plaintiff who appeared in court during the hearing of the applications that, apart from an order that a suit has abated, the court cannot make any substantive order in a suit that has abated.

Due to the foregoing, the court cannot grant the substantive orders sought in the defendants' application dated 12<sup>th</sup> April, 2017. The court cannot also grant prayers 3 and 4 of the interested parties' application. In the final analysis, the orders that commend themselves to me and which I hereby make in the two applications before me are the following:

1. I declare that this suit has abated as relates to the claim by and against the plaintiff and consequently, the orders that were made herein in favour of and against the plaintiff stand discharged on account of that abatement.
2. The Defendants are awarded the costs of the suit as against the deceased Plaintiff to be paid by his estate.

**Delivered and Dated at Nairobi this 19<sup>th</sup> day of April, 2018**

**S. OKONG'O**

**JUDGE**

**Ruling read in open court in the presence of**

Ms. Oriwo	Plaintiff
No appearance	1 <sup>st</sup> Defendant
No appearance	2 <sup>nd</sup> Defendant
Mr. Thuo	Interested parties
Mr. Waweru	Court Assistant