



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MACHAKOS

ELC. CASE NO. 470 OF 2012

JOHN NGULA MUSILU.....PLAINTIFF/RESPONDENT

VERSUS

CO-OPERATIVE BANK OF KENYA.....DEFENDANT/APPLICANT

RULING

1. In the Application dated 30th January, 2017, the Defendant sought to have the suit declared as abated and for costs incurred in defending the suit awarded to him. The said Application was not opposed by the Plaintiff and was allowed. The Plaintiff has now filed an Application dated 30th June, 2017 in which he is seeking for an order to revive the suit.
2. The Application is premised on the ground that the Plaintiff died on 8th August, 2015; that Beatrice Mukonyo Ngula has obtained Letters of Administration for the Estate of the deceased Plaintiff and that the said Letters of Administration took awhile to be obtained.
3. In her reply, the Defendant's advocate deponed that the Application lacks merit and is an abuse of the court process.
4. In her Supplementary Affidavit, the Plaintiff's legal representative deponed that her late husband never informed her that he had filed the current suit; that she instructed the advocates to file the current Application to revive the suit on 30th June, 2017 and that the delay in filing the suit was not deliberate.
5. The Plaintiff's counsel submitted that after the death of the Plaintiff on 8th August, 2015, it took awhile for them to trace the Plaintiff's relatives; and that it was not until June, 2017, through the Chief, that they traced the Plaintiff's wife and that by that time, the suit had abated. Counsel submitted that the current Application should be allowed.
6. The Defendant's counsel submitted that no good reason has been given as to why the Application for substitution was not made within one (1) year of the demise of the deceased; that the Applicant has not sought for the leave of the court to extend time within which the proposed legal representative of the Plaintiff should substitute the Plaintiff and that the Application lacks merit.
7. It is not in dispute that the Plaintiff herein died on 8th August, 2015. On 23rd June, 2016, the Plaintiff's wife, Beatrice Mukonyo Ngula, obtained the full Letters of Administration in respect to the Estate of the deceased.
8. This court marked the suit as having abated on 9th May, 2017. Order 24 Rule 3(2) of the Civil Procedure Rules provides as follows:

“Where within one (1) year no Application is made under sub rule (1), the suit shall so far as the deceased Plaintiff is concerned, and on the Application of the Defendant, the court may award him the costs which he may have incurred in defending the suit to be recovered from the Estate of the deceased Plaintiff; provided the court may, for good reason on Application, extend the time.”
9. The suit herein therefore abated by operation of the law one (1) year after the death of the Plaintiff, and the order of the court of 9th May, 2017 was for the purposes of awarding the Defendant the costs for the abated suit.
10. The Plaintiff's legal representative has deponed that she was not aware of the existence of the suit, and that even after obtaining the letters of administration in 2016, it was not until June, 2017 that she received information from the Assistant Chief of Ndunduni Sub-location in Kangundo that the Plaintiff's advocate was looking for her. That is when she knew about the present claim.
11. Order 24 Rule 7(2) of the Civil Procedure Rules provides that a person claiming to be the legal representative of a deceased Plaintiff may

apply for an order to revive a suit which has abated, and if it is proved that he was prevented by any insufficient cause from continuing the suit, the court shall revive the suit.

12. The Plaintiff's legal representative has informed the court that she was not aware of the existence of this suit until the sub-chief of the area looked for her and informed her of the same. In my view, the explanation of the Applicant for the delay in filing the current Application is plausible and convincing. The Applicant's explanation has not left unexplained gaps in the sequence of events.

13. Consequently, I allow the Plaintiff's Application dated 30th June, 2017 as prayed. The Plaintiff to file and serve the amended Plaint to the Defendant within fourteen (14) days of the date of this Ruling.

DATED, DELIVERED AND SIGNE IN MACHAKOS THIS 13TH DAY OF APRIL, 2018.

O.A. ANGOTE

JUDGE