



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MOMBASA

ELC CASE NO. 308 OF 2015

CLEMENT OTIENO OKUMU PLAINTIFF

-VERSUS-

BARCLAYS BANK OF KENYA LIMITED

PARASHKUMAR NANJIBHAI

BHUDIA ARJAN HARJI DEFENDANTS

RULING

1. On the 6th November 2017, the 2nd 7 3rd defendants filed a notice of preliminary objection to the effect that the plaintiffs application dated 30th September 2015 is hopelessly misconceived, totally devoid of merit and mala fides on the grounds:

1. The plaintiff died on 14.12.2013 and the Administrators have failed to substitute the plaintiff.

2. The Administrators having failed to comply with the strict timelines set under Order 24 rule 3(2) and 4(3), this suit has therefore abated.

2. The parties chose to argue the preliminary objection by way of written submissions. I have read the submissions filed on record. It is not in dispute that the plaintiff died. The application being opposed sought for orders that:

i) The Court do extend time, set aside the abatement and revive the suit.

ii) That there be substitution and joinder of the administrators namely Perez Okumu, Beatrice Obiero and Henry Okumu.

3. The grounds upon which the application was set on its face and it was also supported by an affidavit sworn by Beatrice Obiero. The application was allowed on 16th November 2017 on the grounds that none of the Respondents had filed a document to oppose the application neither were they present to make their representations in Court against the issuance of the orders. It is not clear at what point the notice of preliminary objection was filed whether before or after the orders had been issued given that the Court receipt does not indicate the time of filing. However even if the notice was in the file at the time the order was made, the same is overtaken by events since the application it sought to oppose is already dispensed with and no application has been made to set aside or review or appeal the orders of this Court made on 6th November 2017.

4. Further if the Court was to proceed to determine the merits of the preliminary objection, the plaintiff is said to have died on 14.12.2013. The time for substitution under substitution order 24 rule 3 (2) is one year in this case the time limit would be 13.12.2014. The same rule has a proviso in the following terms: -

“provided the Court may for good reason on application extend time.”

5. In this instance, the applicants included a prayer for extension of time in their application dated 30th September 2015. The 2nd and 3rd Defendants did not file any reply stating that reasons for seeking to extend time lacked merit. The fact that the rules give the Court's discretion to extend time and the preliminary objection was made after such an application was brought to the Court's attention, the preliminary objection was thus made late in the day. On this point it's my finding that it is the preliminary objection which is misconceived and devoid of merit. I also note that the cases cited by the defendants were not annexed to the submissions.

6. In totality of the foregoing, I find the notice of objection dated 6th November and filed on the same date as misconceived, devoid of merit and a waste of the Court's time. The same is dismissed with costs in the cause.

Dated, signed & delivered at Mombasa this 27th June 2018

A. OMOLLO

JUDGE