



**REPUBLIC OF KENYA**

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

**LAND CASE NO. 105 OF 2010**

**ROBERT MUKARANI SIMITI.....1<sup>ST</sup> PLAINTIFF**

**JOSEPH WANDAKA.....2<sup>ND</sup> PLAINTIFF**

**FRED WANGILA.....3<sup>RD</sup> PLAINTIFF**

**VERSUS**

**PETER BADHIA.....1<sup>ST</sup> DEFENDANT**

**PETER WEKESA.....2<sup>ND</sup> DEFENDANT**

**ANNE WEKESA.....3<sup>RD</sup> DEFENDANT**

**DR. TIMOTHY PIERCE.....4<sup>TH</sup> DEFENDANT**

**RULING**

1. The application dated **29/1/2018** and filed in court on **8/3/2018** has been brought by the plaintiff. It seeks the following orders:-

**a. That the honourable court be pleased to make an order to revive this suit.**

**b. That the honourable court be pleased to substitute the plaintiff who is deceased with one Anthony Bulitia Simiyu, Amos Wanjala Simiyu and Sarah Nekesa Simiyu**

**c. That upon getting prayer No.1 and 2 above the applicants be granted leave further to amend the plaint to reflect the names of the substituted applicants.**

2. The applicant has brought the application under **Sections 1A, 3, 3A and 63(c)** of the **Civil Procedure Act** and **Order 24 Rules 1 and Order 31 Rules** of the **Civil Procedure Rules**. The application is supported by the sworn affidavit of the plaintiff.

3. The grounds upon which the application is made are contained at the foot of the application. They are that the plaintiff **Barnabas Simiyu Munialo** died on **16/8/2015**; that Letters of Administration of the Estate of Barnabas Simiyu Munialo were issued to **Antony Bulitia Simiyu, Amos Wanjala Simiyu and Sarah Nekesa Simiyu** on **15/6/2016** and that the claim in the suit is for a declaratory order that the transactions between the plaintiff and the defendants is null and void for want of Land Control Board Consent, eviction, injunction and the cause of actions survived the plaintiff.

4. The sworn affidavit of the Risper Arunga Advocate for the applicant opposed the application dated **29/1/2018** claiming that the applicants have not demonstrated sufficient cause for reviving the suit as they were issued with Letters of Administration within ten months from the date of demise of the deceased but chose to bring the instant application more than two and half years after the demise of the deceased; that the application is incompetent as its supporting affidavit was not sworn by the applicants but by their advocate and that the **1<sup>st</sup>** defendant is deceased and has not been substituted.

5. I have considered the application and the grounds of opposition. The applicants may have delayed but they have finally brought the application and it is before the court. It is normally the duty of a court of law to hear matters and make just determinations based on evidence and on the merits and not on technicalities. Besides the matters that surround a deceased person's affairs may be complex and beyond comprehension at times as new players enter the arena. It can be seen that there are already more than one person named as the administrator of the estate. Judging by the normal environment families find themselves in when succession matters arise, there may be other persons entitled to beneficial interest in the estate out there whose roles in this matter can not be immediately seen.

6. In view of what has been said above I find no good ground to deny the application dated **29/1/2018**. The same is allowed as prayed. The amended plaint reflecting the substitution shall be filed and served within 14 days of this order. The costs thereof shall be in the cause.

**Dated, signed and delivered at Kitale on this 24<sup>th</sup> day of September, 2018.**

**MWANGI NJOROGE**

**JUDGE**

**24/9/2018**

Coram: Before Hon. Mwangi Njoroge, Judge

Court Assistant - Picoty

Mr. Bisonga for respondent

Ms. Munialo holding brief for Arunga for the applicant

**COURT**

Ruling read in open court.

**MWANGI NJOROGE**

**JUDGE**

**24/9/2018**