



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAKURU

ELC NO. 583 OF 2013

CHARLES KAMAU KARANJA.....PLAINTIFF

VERSUS

THE DISTRICT LAND SURVEYOR

NAKURU DISTRICT.....1ST DEFENDANT

THE LAND REGISTRAR, NAKURU.....2ND DEFENDANT

AYUB NJOROGE WAINAINA3RD DEFENDANT

AND

VIRGINIA W. NJOROGE.....APPLICANT

RULING

(Application for substitution of a deceased party; application allowed).

1. The application before me is that dated 29 June 2017 filed by one Virginia W. Njoroge, who wishes to be substituted for Ayub Njoroge Wainaina, the 3rd defendant, who is said to have died on 21 July 2014. The application also seeks the revival of the suit for the reason that it has abated against the 3rd defendant.

2. The suit itself was commenced by way of a plaint which was filed on 6 November 2013. In the suit, the plaintiff sued three defendants, the 1st and 2nd defendants being the District Land Surveyor of Nakuru District and the District Land Registrar, respectively, and the 3rd defendant being Ayub Njoroge Wainaina. It was pleaded that in the year 2000, the late Ayub, filed a boundary dispute before the Bahati Land Disputes Tribunal, which made an award in his favour. The plaintiff then filed an appeal, being HCCA No. 41 of 2001, which is said to be still pending. It is averred that despite this, the 3rd defendant has been trespassing into the plaintiff's land by marking new boundaries. In the suit, the plaintiff has sought orders to have the defendants restrained from interfering with the plaintiff's land parcel Bahati/Bahati Block 1/395.

3. I have gone through the application. I have seen a Certificate of Death showing that Ayub Njoroge Wainaina died on 21 July 2014. I have also seen a Certificate of Grant of Letters of Administration issued to the applicant on 25 October 2015, and a confirmed grant issued on 30 September 2016. I have nothing before me which contests the capacity of the applicant. Although the applicant has not given me good reason as to why this application is being filed about two years after she received the grant of letters of administration, in my discretion, I will allow the revival of the abated suit. I therefore order that the deceased 3rd defendant be substituted with the applicant.

4. I will however make no orders as to costs.

5. It is so ordered.

Dated, signed and delivered in open court at Nakuru this 20th day of September 2018.

JUSTICE MUNYAO SILA

ENVIRONMENT & LAND COURT AT NAKURU

In presence of: -

Mr. Katithi holding brief for Mr. Gakinya for the plaintiff.

Mr. Simiyu holding brief for Ms. Njeri Njagua for the applicant/3rd defendant.

1st and 2nd defendants: Absent.

Court Assistant: Nelima.

JUSTICE MUNYAO SILA

ENVIRONMENT & LAND COURT AT NAKURU