



**REPUBLIC OF KENYA**

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

**ELC CAUSE NO. 41 OF 2017**

**FORMERLY NAKURU ELC NO. 341 OF 2013**

**LEMITEI OLE KOROS.....1<sup>ST</sup> PLAINTIFF**

**PARIT OLE SETEK.....2<sup>ND</sup> PLAINTIFF**

**-VERSUS-**

**ATTORNEY GENERAL.....1<sup>ST</sup> DEFENDANT**

**KIPIRA OLE SANTAL.....2<sup>ND</sup> DEFENDANT**

**TULASHA ENOLE NYAMO.....3<sup>RD</sup> DEFENDANT**

**OLOTUEK NYAMO.....4<sup>TH</sup> DEFENDANT**

**RULING**

The Application before me is the Notice of Motion dated 13<sup>th</sup> February, 2018 which is brought under Article 159 of the Constitution of Kenya 2010 Section 1A, 1B and 3A of the Civil Procedure Act. The Application seeks for order of extension of time within which to substitute the 1<sup>st</sup> Plaintiff and revive the suit of the 1<sup>st</sup> Plaintiff against the Defendant and to make the legal representatives of the 1<sup>st</sup> Plaintiff a party to the suit.

The Application is based on the grounds that the Applicant wishes to protect the interest of the 1<sup>st</sup> Plaintiff who is deceased and further that the extension of time will allow the court to fully adjudicate on the issue for determination.

The Application was supported by the Affidavit of one Amos Ole Koros who avers that he is the son of the 1<sup>st</sup> Plaintiff and the intended legal representative.

He averred that the deceased died on 8<sup>th</sup> July, 2016 and that they lost contact with their advocates on record whom the deceased had direct communication and hence they are outside the prescribed period for substituting a party and hence the need for the instant Application.

The Applicant further averred that they started to obtain grant of letters of administration in respect of the estate of the deceased so that they will be able to preserve the estate of the deceased and to protect his interest in the suit herein.

The Application was opposed by the 2<sup>nd</sup> Defendant/Respondent by way of a Replying Affidavit. The Respondent confirms that the 1<sup>st</sup> Plaintiff passed on 18<sup>th</sup> July, 2016. He states that the Applicants were granted numerous chances but they failed and neglected to have the deceased substituted.

The Respondent further averred that the present application is meant to delay the hearing of the suit after the court had declared that the suit has abated pursuant to the provisions of order 24 Rule (3) (1) of the Civil Procedure Rules. He further stated that no grant ad-litem had been issued and hence the Application is incompetent and that since the suit was filed in the year 2003 the 1<sup>st</sup> Plaintiff had not taken out any steps to have the suit heard and because of the Plaintiff's disinterest the Defendant has suffered prejudice and hence prays for the dismissal of the Application.

I have read the Application before me and the submissions made by counsel for the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants and the issue for determination before me is whether the court should exercise its discretion in granting an order for extension of time in respect of revival of a suit that has abated.

In exercising its discretion the court must find that there exist such sufficient cause to warrant the revival of a case and extension of time. In the instant Application the Applicant states that it was only the deceased who had contact with the Advocate on record and he did not know about the existence of the current suit and upon hearing of the same he proceeded and applied for letters ad-litem to enable him have capacity to be substituted as a Defendant and to this end he has annexed copies of the Application for the same and during the hearing of the Application counsel for the Applicant confirmed that they have since obtained the said grant.

In the case of **Attorney General -Versus- Law Society of Kenya and Another (2013)eKLR** the court held that sufficient cause must be one that is rational, plausible, logical and convincing, reasonable and truthful and one that does not leave gaps.

From the above I am convinced that the Applicant has demonstrated a rational, plausible and logical cause as to why he could not be substituted as 1<sup>st</sup> Plaintiff in the substantive suit. I find that it will not be reasonable in foreclosing a party that wishes to have a suit filed or was filed against revived.

In the instant case even though the suit by the 1<sup>st</sup> Plaintiff had abated the Applicant had appropriately applied to have the same revived and am reasonably convinced of the appropriateness of his application and furthermore it shall serve the interest of justice to enable the 1<sup>st</sup> Plaintiff have his day in court.

The upshot of my findings is that I will allow the Application dated 13<sup>th</sup> February, 2018 in the following terms:-

1. That the suit by the 1<sup>st</sup> Plaintiff against the Defendant be and is hereby revived.
2. That Amos S. Ole Koros be and is hereby substituted as the 1<sup>st</sup> Plaintiff in the place of Lemitei Ole Koros who is deceased.
3. That the Plaintiff do amend, file and serve the amended plaint within 14 days on the Defendants and the matter be mentioned on 2<sup>nd</sup> October, 2018 for directions.
4. That each party to bear its costs.

**Dated, Signed and Delivered in open court at NAROK on this 17<sup>th</sup> day of September, 2018**

**Mohammed Noor Kullow**

**Judge**

**17/9/18**

In the presence of:-

Mr Taliti holding brief for Sankale for 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendant/Respondent

Ms Cheptoo holding brief for Andama for the plaintiff/Applicant

CA:Kimiriny