



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KISUMU

ELC. CASE NO. 325 OF 2017 (FORMERLY HCC NO. 342 OF 2002)

JOHN BRUNO OLOO.....PLAINTIFF

VERSUS

THE REGISTERED TRUSTEES

TRINITY FELLOWSHIP.....DEFENDANT /RESPONDENT

AND

IAN DAVID OLOO.....APPLICANT

RULING

1. Ian David Oloo, the Applicant, filed the notice of motion dated 22nd November 2017, seeking for the suit filed by John Bruno Oloo, the Plaintiff, against the Registered Trustees Trinity Fellowship, the Defendant, which has abated to be revived; the Applicant to be substituted for the Plaintiff and the plaint be amended. He also prays for costs. The application is based on the four (4) grounds on its face and the supporting affidavit of the applicant sworn on a date that is not indicated.

2. The application is opposed by the Defendant through the three grounds of opposition dated 12th March 2018.

3. The application came up for hearing on the 8th May 2018 when Mr. Otieno and Taremar, learned counsel for the applicant and Defendant respectively, made their oral submissions.

4. The issues for determination are as follows;

a) Whether the cause of action survived the death of the Plaintiff.

b) Whether the Applicant has tendered sufficient cause for not continuing with the suit before it abated.

c) Who pays the costs of the motion.

5. The Court has after carefully considering the four grounds on the motion, the affidavit evidence by Applicant, the three grounds of opposition, oral submissions by both counsel and the record come to the following determinations;

a) That the Plaintiff passed on the 14th August 2015 as confirmed by the Applicant's deposition and the certificate of death number 0444133 dated 4th September 2015, attached to his affidavit.

b) That the last court action in this matter before filing of the current application was the delivery of the court's ruling dated 7th May 2015. That the application subject matter of this ruling was filed on the 23rd November 2017 which is about two (2) years, five (5) months and sixteen (16) days from the last court action.

c) That the suit commenced by the Plaintiff through the plaint dated 28th March 2002 is for among others recovery of L.R. 9341/234 I.R. No. 4784 from the Defendant. That the cause of action survived the death of the Plaintiff but as no application to substitute the Plaintiff was made within one year from his death, the suit abated on or about 14th August 2016.

d) That the Applicant was on 18th May 2017 issued with a grant of letters of administration of the estate of John Brono Oloo Malanga in Kisumu C.M. Succ. Cause No. 113 of 2017. The Applicant has explained that the failure to apply for substitution of the

Plaintiff was because nobody had been appointed as the legal representative before his appointment. That as the Applicant is now the legal representative of the estate of the Plaintiff and has applied for the revival of the suit that abated on or about 14th August 2016, the court finds the prayer to be reasonable taking into consideration the suit is primarily over land.

6. That for the reasons set out above the Applicant's notice of motion dated 22nd November 2017 has merit and is allowed in terms of prayers (a) and (b) with costs in the cause. That the amended plaint be filed and served in 14 (fourteen) days.

Orders accordingly.

S.M. KIBUNJA

ENVIRONMENT & LAND

JUDGE

DATED AND DELIVERED THIS 17TH DAY OF OCTOBER 2018

In the presence of:

Plaintiff Absent

Defendant Absent

Applicant Absent

Counsel Absent

S.M. KIBUNJA

ENVIRONMENT & LAND

JUDGE