

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAROK

ELC CAUSE NO. 325 OF 2017

FORMERLY KISII ELC NO. 457 OF 2016

JOSEPH KIPCHUMBA KAINO PLAINTIFF

-VERSUS-

MATHAYO LESHAO DEFENDANT

RULING

The Application before me is the Notice of Motion dated 18th September, 2017 which was brought under order 24 Rule 3 (1) of the Civil Procedure Rules and Section 3A of the Civil Procedure Act in which the Applicant seeks to be substituted as the Plaintiff following the death of Joseph Kipchumba Kaino who passed on 5th September, 2016.

The application is based on the grounds that he is the administrator of the estate of the late Joseph Kipchumba Kaino and that the Respondent will not suffer any prejudice as a result of the substitution hereof. The Application was further supported by the affidavit of James Ruto Kipchumba where he depones that he is the son of the late Joseph Kipchumba Kaino who passed on 5th September, 2016 and that he has since obtained letters of administration in respect of his deceased father's estate and he wishes to be substituted as the Plaintiff.

The Application was opposed by the Plaintiff who filed grounds of opposition and stated that the Application is void as the suit herein has already aborted and that the Application is an exercise in futility.

I have read the Application before me and the submissions made by counsel. This is an Application in which the Applicant seeks for the discretion of the court to have him substituted as the plaintiff in the matter following the death of his father on 5th September, 2016. Since this is land matter which is very emotive it shall serve the wider interest of justice if I allow the Application herein as granted by the provisions of Article 159 of the Constitution.

The upshot of the above is that I will allow the Application dated 18th September, 2017 and the costs of the same be in the cause.

DATED, SIGNED and DELIVERED in open court at NAROK on this 16th day of October, 2018

Mohammed Noor Kullow

Judge

16/10/18

In the presence of:-

Kaikai for Muema for the plaintiff

Mr Ogutu for the Defendant

CA:Chuma