

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

MILIMANI LAW COURTS

E.L.C. CASE NO. 257 OF 2010

MOHAMMED SADIQUE ADAM.....PLAINTIFF

VERSUS

JOHN NJUGUNA NDUATI.....1ST DEFENDANT

JOYCE WANJIRU KAMAU.....2ND DEFENDANT

COMMISSIONER OF LANDS.....3RD DEFENDANT

RULING

Through the application dated 5/12/2017 filed in court on 1/2/2018, the Plaintiff seeks to set aside the order made on 26/1/2015 dismissing his suit. The application is made on the grounds that the suit was dismissed when the Plaintiff failed to attend court. The Plaintiff died on 26/4/2014. His son, Habib Mohammed Sadique Adam wishes to substitute him as a Plaintiff. He obtained letters of administration *ad litem* on 22/7/2015.

The 1st Defendant opposed the application arguing that it was *res judicata* and that the suit had abated in April, 2015. The 2nd Defendant also opposed the application through the replying affidavit filed in court on 2/3/2018. She set out facts on the Plaintiff's failure to prosecute the case leading to the dismissal of the suit on 27/1/2015. The 2nd Defendant avers that the deceased Plaintiff ought to have been substituted within a year of his death and that no reasons were given by the Plaintiff for the failure to substitute the Plaintiff before the suit abated. The Defendants maintained that a suit that has abated does not exist. They further argued that the delay of 3 years and 10 months in bringing this application was inordinate.

The court has considered the submissions of the parties and agrees with the Defendants that here was inordinate delay which is inexcusable in bringing this application. No reasons were given for the long delay in substituting the Plaintiff yet letters of administration were issued to the proposed Plaintiff way back in 2015.

The application dated 5/12/2017 is dismissed with costs to the Defendants

Dated and delivered at Nairobi this 28th day of November 2018.

K. BOR

JUDGE

In the presence of: -

Ms. C. Karimi holding brief for Mr. McCourt for the 2nd Defendant

Mr. V. Owuor- Court Assistant

No appearance for the Plaintiff, 1st and 3rd Defendants