



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT NAIROBI
MILIMANI LAW COURTS
ELC. CASE NO. 1361 OF 2007

KINYANJUI WATHIARI.....1ST PLAINTIFF
DAVID KOMU.....2ND PLAINTIFF
MUTURI MURIRU.....3RD PLAINTIFF
KANG'ETHE GATHIGE.....4TH PLAINTIFF

VERSUS

GICHANA GATHUKU.....DEFENDANT

RULING

Coming up before me for determination is the Amended Notice of Motion dated 14th July 2015 in which the Defendant/Applicant seeks for the following orders:

1. Spent.
2. That following the death of the 1st, 2nd, 3rd and 4th Plaintiffs, this suit be declared as having abated as no application to substitute them has ever been filed by their legal representatives;
3. That this court do lift and set aside its orders given on 23rd June 2010 the same having been in favour of the deceased parties;
4. That in the alternative to prayer 3 above, the order of inhibition restraining the Defendant or any other person from dealing with or registering any dealings with the parcel of land known as Githunguri/Ikinu/657 be lifted forthwith;
5. That this suit be struck out and dismissed for failure to extract summons to enter appearance and or have the summons served on the Defendant for a period of over 5 years leading to this suit being abated
6. That the deceased Plaintiffs' estates meet the costs of this Application and suit.

This Application is premised on the grounds appearing on its face together with the Defendant/Applicant's Supporting Affidavit dated 17th October 2015 and his Further Supporting Affidavit dated 2nd April 2015 in which he averred that all the Plaintiffs were deceased yet no step has been taken to substitute them and further that a period of 5 years had lapsed without him being served with summons to enter appearance.

The Application is unopposed.

It is the submission of the Defendant/Applicant that the 3rd Plaintiff died in the year 1993, the 4th Plaintiff died on 2nd September 2010, the 2nd Plaintiff died on 26th July 2010 and the 1st Plaintiff died on 14th February 2014. He highlighted that according to **Order 24 Rule 4(1)** of the Civil Procedure Rules 2010 the law is to the effect that where there are several plaintiffs, the cause of action does not survive or continue to the surviving plaintiffs but the cause of action survives to the legal representatives of the deceased who shall proceed with the suit upon being formerly substituted. He further highlighted that according to **Order 24 Rule 4(3)(2)** of the same rules, the time limitation to substitute a deceased plaintiff is within one year of the death, failure to which the suit shall abate in so far as the deceased plaintiff is concerned.

I have perused this file and do not find any evidence that any application for substitution was filed by February 2015 which is one year since the last Plaintiff died. Any application for substitution filed after this date is clearly outside the allowable time period and does not count. That being the position, I find that this suit has abated in respect of all the Plaintiffs herein.

This suit therefore stands as abated and this Application is allowed with costs to the Defendant.

DELIVERED, DATED AND SIGNED AT NAIROBI THIS 17TH DAY OF MARCH 2017.

MARY M. GITUMBI

JUDGE