

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT MILIMANI

ELC.NO.102 OF 2016

FREDRICK CLARENCE KITTANY.....PETITIONER/APPLICANT

=VERSUS=

EASTSIDE DEVELOPMENT LIMITED.....1ST DEFENDANT

NAIROBI CITY COUNTY.....2ND DEFENDANT

RULING

This is a Notice of Motion dated **13th January 2016**, wherein the 2nd Defendant has sought for dismissal of the Plaintiffs suit on allegation that the Plaintiff herein **Fredrick Clarence Kittany** is deceased as he died on **14th March 2000**, at Nairobi Hospital as per attached Death Certificate annexure **KT2**.

The counsel for the Plaintiff has indeed confirmed that the Plaintiff herein is deceased and that she received instructions from one **Collins Kipchumba Ngetich Kittany** who is the son of **Fredrick Clarence Kittany** . If indeed the Plaintiff herein is deceased, then he had no capacity to file this suit. The suit is therefore a non-starter and consequently the same is struck out and the suit dismissed with costs to be borne by the purported Plaintiff as prayed in **prayer No. 2** of the Notice of Motion dated **13th January 2017**.

Consequently, the Court allows the Notice of Motion dated **13th January 2017**, entirely in terms of prayers **No.2, 3** and **4**.

It is so ordered.

Dated, Signed and Delivered at Nairobi this 3rd day of March 2017

L.GACHERU

JUDGE

In the presence of:-

Mr Maina holding brief for Ms Kwamboka for the Plaintiff

Court Clerk : Kevin

L. GACHERU

JUDGE