



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT OF KENYA**

**AT NAKURU**

**ELC NO.146 OF 2012**

**DKT**

**PKT** (Suing in their capacity as the Guardian ad Litem to

M W T).....**APPLICANT**

**VERSUS**

**JMT**.....**1<sup>ST</sup> RESPONDENT**

**SKT**.....**2<sup>ND</sup> RESPONDENT**

**RULING**

***(Application for substitution of deceased plaintiff; Order 24 Rule 3; applicants holding grant of letters of administration ad litem; application opposed on grounds inter alia that suit had abated; application for substitution filed before lapse of one year; no reason to deny the application; application allowed)***

1. The application before me is that dated 3 August 2014 brought under the provisions inter alia of Order 24 Rule 3(1) of the Civil Procedure Rules, 2010. It is an application seeking to substitute the plaintiff herein, MWT(now deceased), with DKT and PKT, who are said to be her legal representatives. The application is opposed by the defendants who have filed grounds of opposition. Before I go to these, I think it is appropriate that I give a little background to this case.

2. This suit was commenced by way of plaint filed on 12 July 2011 by DKT and PKT who filed the case as guardians ad litem to MWT who was then still alive. Prior to filing the suit, the plaintiffs had filed a Miscellaneous Suit, being Miscellaneous Application No. 154 of 2011, seeking to be appointed guardians ad litem on behalf of MWT who was their mother. It was said in the application, that M was not of sound mental health. The application was allowed and that is how the two plaintiffs became guardians ad litem for MWT.

3. In the plaint, it was averred that MWT was previously the owner of the land parcel Bahati/Kabatini/[particulars withheld] until 20 August 2010, when the defendants caused it to be subdivided to create two new land parcels identified as Bahati/Kabatini Block [particulars withheld]. The plaintiffs contended that this was done by way of fraud inter alia taking advantage of M's sickness to transfer the property to themselves. In the suit, the plaintiffs sought orders inter alia to have the two subdivisions, registered in the name of the defendants, to be transferred back to MWT. The defendants entered appearance and filed defence. They denied all the allegations of the plaintiffs.

4. In the supporting affidavit to this application, sworn by DKT, it is deposed that M died on 29 September 2014. Upon her demise, he and PKT, applied to be granted letters of administration ad litem and their application was allowed. They have pointed out that previously, they were guardians ad litem on her behalf.
5. The defendants in their grounds of opposition, have averred inter alia that the application is a non-starter and an abuse of the process of court; that the application offends the provisions of the Mental Health Act (Cap 248) and the Law of Succession Act (Cap 160); that the applicants are strangers to this suit; that the suit stands abated and that the application is defective.
6. I invited counsels to file submissions, but only Mr. Waiganjo, counsel for the applicants filed submissions. I have taken note of these submissions.
7. The application before me is one for substitution. The applicable law is set out in Order 24 Rule 3 which is drawn as follows :-

### ***3. Procedure in case of death of one of several plaintiffs or of sole plaintiff***

#### ***[Order 24, rule 3.]***

*(1) Where one of two or more plaintiffs dies and the cause of action does not survive or continue to the surviving plaintiff or plaintiffs alone, or a sole plaintiff or sole surviving plaintiff dies and the cause of action survives or continues, the court, on an application made in that behalf, shall cause the legal representative of the deceased plaintiff to be made a party and shall proceed with the suit.*

*(2) Where within one year no application is made under subrule (1), the suit shall abate so far as the deceased plaintiff is concerned, and, on the application of the defendant, the court may award to him the costs which he may have incurred in defending the suit to be recovered from the estate of the deceased plaintiff:*

*Provided the court may, for good reason on application, extend the time.*

8. The case herein involves the death of a sole plaintiff. The real plaintiff was the deceased and not the two persons who instituted suit as guardians ad litem. It will be seen that Order 24 Rule 1 above, provides that where a sole plaintiff dies, and the cause of action survives or continues, the court on application, shall cause the legal representative of the deceased plaintiff to be made party so as to proceed with the suit. Under subrule 2, the application for substitution is supposed to be made within one year of death or else the suit shall abate, although the court has discretion to extend time.

9. In our case, the fact that the two applicants have been appointed legal representatives of the deceased, limited for purposes of pursuing a suit, has not been disputed. I have seen for myself the Limited Grant of Letters of Administration issued to the applicants on 15 April 2015. I have seen that the application has properly been brought under the provisions of Order 24. I wonder how this application offends the provisions of the Mental Health Act, and the Law of Succession Act, as claimed by the defendants. I also do not see any defect in it as alleged by the defendants. No submissions were ever filed by the defendants to elaborate why they are of the view that the application is defective or should be dismissed. There was the objection on the ground that the suit has abated, but I do not see the place of this. A suit abates one year after death if an application for substitution has not been made. In our scenario, the plaintiff died on 29 September 2014. The applicants obtained the limited grant on 15 April 2015. They filed this application on 12 August 2015 before one year had lapsed. There is no way it can be argued that the suit had abated by the time the application for substitution was filed.

10. On my part, I see no reason why I should deny this application. The same is allowed. I do permit the two applicants to be substituted for the deceased plaintiff. I however make no orders as to costs.

11. It is so ordered.

**Dated, signed and delivered in open court at Nakuru this 2<sup>nd</sup> day of March 2017.**

**MUNYAO SILA**

**JUDGE**

**ENVIRONMENT & LAND COURT**

**AT NAKURU**

**In presence : -**

Mr. Waiganjo for the applicants

No appearance on the part of Mr. Wambeyi Makomere for the defendants.

Court Assistant : Nelima