



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAKURU

CASE No. 298 OF 2014

DANIEL KAGUNDU MUTHEE.....PLAINTIFF

VERSUS

PETER MUHIKA KAMAU1ST DEFENDANT

GEORGE NG'ANG'A MUNGAI.....2ND DEFENDANT

RULING

(Application for substitution of a deceased plaintiff; plaintiff passed away on 13th May 2016; On 23rd November 2016 applicant was granted letters of administration ad litem in respect of the deceased's estate; application allowed)

1. Before the court for determination is Notice of Motion dated 22nd February 2016 filed by LINUS NJAGI MUTHEE. He seeks the following orders:

- a) THAT this honourable court be pleased to substitute LINUS NJAGI MUTHEE in place of the plaintiff DANIEL KAGUNDU MUTHEE.
- b) THAT this honourable court be pleased to issue directions as to the hearing of the suit herein.
- c) THAT the costs of this application be provided for.

2. The application is brought under Order 24 Rule 3 of the Civil Procedure Rules, 2010 among other provisions. It is supported by the affidavit of the applicant.

3. When the application come up for inter parte hearing the applicant satisfied the court that the application had been served. The defendant did not file any response to the application and did not also attend the inter parte hearing of the application.

4. The applicant deposed that the plaintiff passed away on 13th May 2016. He exhibited a death certificate in confirmation thereof. He further deposed that he was on 23rd November 2016 granted letters of administration *ad litem* in respect of the deceased's estate in Nakuru Probate and Administration Cause No. 319 of 2016. The said letters of administration were duly annexed to the supporting affidavit and are limited for the “*purpose of filing a civil suit and pursuing and prosecuting Nakuru ELC No. 298 of 2014.*”

5. The applicant therefore prays that he be substituted as plaintiff in this suit to enable him prosecute it.

6. I have considered the application and counsel's submissions. I am satisfied from the annexed death certificate that the plaintiff passed away on 13th May 2016 and that the applicant duly obtained letters of administration empowering him to prosecute this suit.

7. In the circumstances, I allow the application. Linus Njagi Muthee is hereby substituted in place of Daniel Kagundu Muthee (deceased) as plaintiff. The new plaintiff to file and serve an amended plaint indicating his name as plaintiff within 14 (fourteen) days from the date of this ruling.

8. Costs in the cause.

Dated, signed and delivered in open court at Nakuru this 27th day of April 2017.

D. O. OHUNGO

JUDGE

In the presence of:

..... for the applicant

.....for the defendant

Court Assistant: Gichaba