



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

**AT NAIROBI**

**ELC NO. 892 OF 2015**

**SALOME WANGUI KIAMBATI.....1<sup>ST</sup> PLAINTIFF**

**JAMES KIAMBATI .....2<sup>ND</sup> PLAINTIFF**

**STEPHEN KARANJA.....3<sup>RD</sup> PLAINTIFF**

**=VERSUS=**

**DORIS WANJIRU.....1<sup>ST</sup> DEFENDANT**

**JONATHAN KIAMBATI MBARIA.....2<sup>ND</sup> DEFENDANT**

**RULING**

1. This is a Ruling in respect of a Notice of Motion dated 10<sup>th</sup> December 2015. The application seeks extension of summons and substitution of the first and third Plaintiff in this case. This case has been in the corridors of justice for the last 24 years. The case was filed on 2<sup>nd</sup> March 1998. The Plaintiffs and defendants are relatives who are fighting over a property known as **LR No. Limuru/ Kamirithu/380**. The dispute between the disputants has an interesting history which I do not wish to delve into at the moment.

2. The applicant who is the second Plaintiff in this case is the only surviving Plaintiff. The first defendant is also deceased. The first Plaintiff died on 28<sup>th</sup> April 2006, and the third Plaintiff died on 26<sup>th</sup> July 2006. Letters of administration in respect of the estate of the first Plaintiff were granted to the applicant who is the second Plaintiff and Joseph Kiambati. Letters of administration in respect of the estate of the third Plaintiff were granted to Jane Wanjiru Mangara and Salome Wanjiru Mangara.

3. The applicant contends that the summons expired due to the fact that both defendants had re-located from Kenya to the United States of America (USA). Their location in the USA was not known hence making it difficult to serve them. The applicant later learnt that the defendants had given a power of attorney to one John Thuo Kiragu to represent them. The applicant and the deceased Plaintiffs had lawyers who did not guide them. At some stage their lawyers too relocated to the USA and did not inform them of the whereabouts of their file. They later learnt that the file had been given to an advocate who is now a judge.

4. The applicants changed their lawyers who did not advise them of what was expected. It is after they engaged the services of their current lawyer that things started moving. This file was transferred from the High Court Civil division to the Environment and land Court where this application was made.

5. The applicant's application is opposed through a replying affidavit sworn by the duly appointed attorney of the defendant who contends that the applicant is not being truthful. That the applicant has always known that he was the duly appointed attorney of the defendants and that court documents in other several other court cases have been served upon him. The Respondent has gone into the merits of the present suit which I find to be immaterial in as far as the present application is concerned.

6. I have carefully considered the applicant's application as well as the objection thereto by the Respondent. There is no contention that the defendants had re-located to the USA. There is also no evidence to convert the applicant's averment that one of their lawyers also re-located to the USA and handed over their file to an advocate without informing them.

7. The applicant is seeking substitution of the deceased plaintiffs and extension of summons. The prayers being sought may be granted based on the discretion of the court considering the circumstances. I have considered the circumstances as given by the applicant and find that sufficient cause has been shown why the abated suit should be revived and summons extended. I allow the application with the result that the abated suit of the first and third Plaintiffs is hereby revived and their legal representatives are hereby substituted in their place. The summons which had expired are hereby extended for a period of twelve (12) months. Costs of this application shall be in the cause.

It is so ordered.

Dated, Signed and Delivered at *Nairobi* on this *31st* day of *May 2017*.

**E.O .OBAGA**

**JUDGE**

In absence of the parties who had been duly served with notice of delivery of ruling.

Court assistant - Hilda