



REPUBLIC OF KENYA

ENVIRONMENT AND LAND COURT AT KISII

CASE NO. 373 OF 2014

STEPHEN BOKE ONGAKI PLAINTIFF

VERSUS

RICHARD MAKORI 1ST DEFENDANT

HARON MOCHAMA 2ND DEFENDANT

JOSEPH MOKUA 3RD DEFENDANT

RULING

1. An application by way of Chamber summons dated 28th March 2017 was brought under certificate of urgency pursuant to Order 1 Rule 14 and Order 24 Rule 3 of the **Civil Procedure Rules, 2010** by Mr. Okenye counsel for the plaintiff/applicant. The orders sought are:

(1) That this application be certified urgent.

(2) That one Jared Momanyi Mose who is legal representative of the deceased plaintiff be substituted as plaintiff and made a party in this case.

(3) That the costs be in the cause.

2. The application is based on grounds (1) to (6) of the face of it. The grounds are:

1. THAT the cause of action in this suit survives or continues.

2. THAT one, Jared Momanyi is desirous of continuing with the case to its conclusion as soon as practicable.

3. THAT for the good ends of justice the deceased plaintiff's name should be substituted by the said legal representative.

4. THAT the said deceased plaintiff died on 7th June 2015 before the case was heard and determined.

5. The deceased plaintiff was the father of the applicant herein.

6. THAT the subject matter in this case is land parcel No. East Kitutu/ Mwamang'era/181 in which the applicant lives.

3. The following documents are in support of the application:

(a) A supporting affidavit of 10 paragraphs sworn by the plaintiff/ applicant

(b) Letters of administration Ad Litem issued on 29th December 2016 in Kisii CMC Succession Cause No. 596 of 2016.

4. The 1st defendant is represented by counsel. Order 1 Rules 1 and 14 and Order 24 Rule 3, **Civil Procedure Rules, 2010** allow a party to be enjoined to a suit as a plaintiff; See **Francis –vs- King & Another [2009] 519 KLR at pg 523**. I find that the application has merit and I allow orders 1 to 3 sought therein.

5. Consequently, I make the following orders:-

(a)The parties to comply with Order 11 Civil Procedure rules, 2010 within the next 45 days from the date hereof.

(b) The parties to be notified accordingly.

(c) Mention before the Deputy Registrar Environment and Land Court, Kisii on 20th July 2017 to confirm compliance and for directions.

G. M. A. ONGONDO

JUDGE - MIGORI

(SITTING AT KISII ELC SERVICE WEEK)

Ruling delivered, signed and dated in open court at Kisii this 18th day of May, 2017.

G. M. A. ONGONDO

JUDGE - MIGORI

(SITTING AT KISII ELC SERVICE WEEK)

In the presence of:

Mr. Okenye for the applicant

N/A for the defendant

Ruth, court assistant