



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MALINDI

ELC CASE NO. 136 OF 2010

SONDHI AASE JORIDPLAINTIFF

VERSUS

DENMAN PROPERTIES LIMITED1ST DEFENDANT

DISTRICT LAND REGISTRAR, KILIFI2ND DEFENDANT

THE HON. ATTORNEY GENERAL3RD DEFENDANT

RULING

1. In the Application dated 2nd August, 2016, the Applicant is seeking for leave to be substituted as the Plaintiff in the suit in the place of the deceased Plaintiff.
2. The Application is premised on the grounds that the Plaintiff died on 22nd August, 2015 and that the cause of action survives her; that the Applicant was issued with a limited grant by the court on 4th May, 2016 and that the Application has been filed without undue delay.
3. The 1st Defendant filed Grounds of Opposition in which he averred that the amendments sought in the Amended Plaint have been sought late in the day; that the amendments are meant to re-open the Plaintiff's case which has since been closed and substantial hearing of the Defendant's case started and that the amendments are meant to cure the gaps in the Plaintiff's case arising out of cross-examination.
4. The Defendant is agreeable to only prayer number 1 of the Application being granted.
5. In his submissions, the Plaintiff's advocate submitted that the prayers sought in the re-amended Plaint are unchanged; that the amendments sought do not introduce any new cause of action and that the issue of re-opening the Plaintiff's case is jumping the gun.
6. The Defendants did not file submissions.
7. The Plaintiff in this matter closed his case. The Defendants called its witness and the only witness that was remaining was the Land Registrar. The court has already directed that the witness summons do issue in respect to the said Land Registrar.
8. Although the 1st Defendant has no objection to the substitution of the Plaintiff, it is opposed to the other suggested amendments in the draft "*Re-Amendment Plaint.*"

9. I have perused the “*Re-Amendment Plaintiff*” and noted that the Plaintiff has not introduced any new cause of action in the said proposed Re-Amended Plaintiff.

10. Indeed, the details of the amendments are in the “*Amended Plaintiff*” which was filed on 11th July, 2012 and not the proposed “*Re-Amended Plaintiff*.”

11. In the circumstances, I allow the Application dated 2nd August, 2016 as prayed.

DATED AND SIGNED AT MACHAKOS THIS 2ND DAY OF MAY, 2017.

O.A. ANGOTE

JUDGE

DATED, DELIVERED AND SIGNED AT MALINDI THIS 12TH DAY OF MAY, 2017.

J.O. OLOLA

JUDGE