



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KITALE**

**LAND CASE NO. 144 OF 2000**

**MARY NANJALA MUHALYA.....PLAINTIFF/APPLICANT**

**VERSUS**

**AMBROSE KIPRUTO (DECEASED)..... DEFENDANT**

**AND**

**JANE CHELANGAT SINGOEI .....RESPONDENT**

**R U L I N G**

1. By an application dated 25/7/2017 the Applicant sought orders that the suit herein be revived, that the Respondent be substituted as the Defendant in this suit in place of the Deceased Defendant and that costs be in the cause.
2. The grounds on which the application is made is that the deceased defendant died in the **year 2012**, that the suit abated, and that the Respondent is the widow of the Deceased Defendant and that she thus deserves to be enjoined as a Defendant in these proceedings.
3. The application is opposed by the Respondent who filed her sworn replying affidavit dated 19/9/2017 on the same date. her affidavit identifies her as Jane Chelagat Kipruto. She states that she is not the Administrator to the deceased's Estate and consequently she cannot be enjoined in the suit as a party. She avers that as per the Court Order of 26/9/2016, in **Citation Cause No. 56 of 2012**, she was ordered to apply for Letters of Administration within 60 days from the date of the order and in default the Citor be at liberty to apply. She avers that she never applied for Letters of Administration and the Limited Grant issued jointly to Mary Wanjala Muhalya and the Respondent has been issued in error as it contradicts the Order of the Succession Court issued on 26/7/2016. She states that the Grant has been fraudulently obtained and further avers that only a legal administrator of a deceased's Estate can be substituted with a deceased litigant.
4. In her submission the Plaintiff avers that there was difficulty in making the Respondent the legal representative of the deceased's estate and she details the history to that effect, which this court considers a proper excuse.
5. She further avers that **Section 54 of the Law of Succession Act** and **paragraph 14 of the Fifth Schedule** to the **Act** sanction the joinder of the respondent as a Defendant in this suit in place of the Deceased Defendant.
6. In reply the Respondent in her submissions urges that **Order 24 of the Civil Procedure Rules** is "very explicit that only a personal representative of the deceased ought to be substituted in place of a deceased

party". She cites the case of *Najeno -vs- Serwanga, Civil Appeal No. 45 of 1971 [1974] EA* and avers that she is not a personal representative of the deceased. The Respondent recalled an application in which the plaintiff had in 2013 sought to have the respondent joined as a Defendant but which was dismissed on the basis that the Respondent was not an administrator to the deceased defendant's Estate.

7. She also states that the Plaintiff was in a position to apply for Letters of Administration herself upon failure by the Respondent to apply for them within 60 days as provided by the *Court Order in Succession Cause No. 56 of 2012* at the *High Court at Kitale*.

8. I have perused the record including the exhibits though some are irregularly attached to the Respondent's submissions. It is clear that the respondent has all along been aware of proceedings that led to the Grant of Letters of Administration ad Litem. She is also the widow to the deceased. In my view, this court is not the proper forum in which to contend that the Letters of Administration ad Litem to the Applicant and the Respondent were issued in error or by way of fraud. It is not possessed of jurisdiction to determine that. Letters of Administration ad Litem have been produced before this court to justify a revival of this suit against the deceased Defendant and the joinder of the Respondent as a Defendant in the place of the deceased.

I therefore grant the application dated 25/7/2017 as prayed.

Dated, signed and delivered at Kitale on this 23<sup>rd</sup> day of November, 2017.

**MWANGI NJOROGE**

**JUDGE**

**23/11/2017**

**Coram**

Before - Mwangi Njoroge – Judge

Court Assistant - Isabellah

Ms. Wahome holding brief for Kundu for the Applicant

N/A for the Respondents

**COURT**

Ruling read in open court in the presence of Counsel for the Applicant.

**MWANGI NJOROGE**

**JUDGE**

**23/11/2017**