



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

ELC CASE NO 26 OF 2014

STEPHEN MUTHAMIA MARETE.....PLAINTIFF

VERSUS

PATRICK KINYUA IRINGO.....DEFENDANT

RULING

1. On 24:04:17, the Court gave directions for the Appeal to be heard by way of Written Submissions.
2. The Respondent aver that they are unable to file such Submissions on account of the following.
 1. That on 06:08:14 before Hon Njoroge J. Appellant was given conditional stay whereby the Appellant was to deposit Kshs. 400,000 within 90 days and that there was no compliance with this order.
 2. That Respondent died more than a year ago and hence the suit has abated.
3. The Court was urged to mark the appeal as having abated.
4. In response to the aforementioned averments, the Court was told that Appellant did comply with the Court's Order in terms of depositing the money. The Court was shown a receipt to that effect.
5. On issue of death of Respondent the Appellant avers that they are not aware of that allegation and that the issue has never been raised. Appellant avers that the allegation of death of Respondent is made in bad faith and that in any event, there is no proof of death of the Respondent.
6. Appellant urges the Court to give a Judgment date without the Submissions of the Respondent.
7. I find that the proceedings of 6.8.14 referred to by the litigants are not in this file. Perhaps they are in the miscellaneous application (which has been mentioned by the parties). However, the Appellant has availed a receipt No. 019 4719 of 2:10:14 as evidence of compliance with the Court orders. I have no reason to doubt this piece of information. The allegation that there was no compliance with the Court Order is hence unfounded.
8. On issue of abatement, I find that on 11:7:17, Miss Kiome did inform the Court that Respondent had died, and on 04:10:17, again gave further information stating that they had filed a case at Nkubu Law Court to get a grant in respect of the estate of deceased.
9. So this is not a situation where the issue of demise of Respondent was brought to light only on 17:12:17. However no evidence of the death has been availed so far.
10. In the circumstances, I direct that the evidence of death of Respondent be availed (by way of a Death Certificate or a grant of letters of Administration to mark the case as abated.
11. On the same note, I decline to give any date for Judgment in view of the uncertainty on whether Respondent is dead or alive.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS 19TH DAY OF DECEMBER, 2017 IN THE PRESENCE OF:-

Court Assistant: Janet

Ndubu for Appellant (in Appeal) present

Gichuki HB for Mwiti for Respondent (in Appeal) present

Mwiti for Respondent (in appeal) present

HON. L. N. MBUGUA

ELC JUDGE