



**REPUBLIC OF KENYA**

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

**AT NAKURU**

**ELC NO. 241 OF 2013**

**KIBII KOSKEI .....PLAINTIFF**

**VERSUS**

**KIPLANGAT ARAP MUTAI .....1<sup>ST</sup> RESPONDENT**

**SAMWEL K NGENO.....2<sup>ND</sup> RESPONDENT**

**ELISHEBA IMINZA KHAYERI .....3<sup>RD</sup> RESPONDENT**

**JUSTINE KIPROTICH BEIMOK .....4<sup>TH</sup> RESPONDENT**

**RULING**

1. On 9<sup>th</sup> June 2015, counsel for the 5th defendant, Mrs. Chesaro, orally applied in court that this suit be dismissed for two reasons :-

(i) That the plaintiff, Kibii Koske, and the 2nd defendant Samwel K. Ngeno are deceased and that the suit has abated.

(ii) That there is a previous suit, Nakuru HCCC No. 145 of 2007 which has been finalized.

2. Ms. Jennifer Ndeda, learned counsel for the plaintiff, was not ready to reply to these issues and sought time to do so. I directed that counsel do address herself on the two issues and respond on 21 October 2015.

3. On that day, Mrs. Chesaro did not appear and an affidavit was filed by Mrs. Gladys Ndeda for the plaintiff giving reasons why the suit should not be dismissed. In her affidavit, Mrs. Ndeda has stated that truly the plaintiff has died but an application to substitute had been made and the same was allowed by consent. The consent was entered into on behalf of the 5th defendant by his previous counsel on record M/s Gordon Ogolla & Associates, before Mrs. Chesaro came into the picture through a notice of change of advocates, and was filed in court on 13<sup>TH</sup> February 2013. On the alleged previous suit, that is Nakuru HCCC No. 145 of 2007, Mrs. Ndeda deposed that it is not true that the same has been finalized. She further deposed that there is in fact a pending application filed by the 5th defendant herein in that suit, seeking orders to have that case consolidated with this one. She annexed a copy of the application dated 1st February 2013, seeking the said orders.

4. I have looked at the documents presented by Mrs. Ndeda, and I do not find any merit in the application

made by Mrs. Chesaro. I have seen that substitution of the deceased plaintiff was allowed by consent and his legal representative, Mr. Daniel arap Bii made the plaintiff in place of the deceased original plaintiff. On the other suit, there is no proof that the same has been finalized and I have no reason to doubt Mrs. Ndeda. On the allegation that the 2nd defendant is deceased, I am afraid that there is no proof of such.

5. Given the above reasons, I see no merit in the application made by Mrs. Chesaro. It is hereby dismissed with costs.

6. It is so ordered.

**Dated, signed and delivered in open court at Nakuru this 21<sup>st</sup> Day of January 2016.**

**MUNYAO SILA**

**JUDGE**

**ENVIRONMENT & LAND COURT**

**AT NAKURU**

**In presence of -:**

Ms Kipruto for the plaintiff/respondent

Mrs Chesaro for 5<sup>th</sup> defendant/applicant

N/A on part of Sheth & Wathigo for 1<sup>st</sup> - 4<sup>th</sup> defendants.

**MUNYAO SILA**

**JUDGE**

**ENVIRONMENT & LAND COURT**

**AT NAKURU**