



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAKURU

ELC NO. 149 OF 2012

MBUTHIA MUKURU1ST PLAINTIFF

KIPLANGAT NGETICH2ND PLAINTIFF

VERSUS

JAMES GESACHO1ST DEFENDANT

ROSEMARY WANJIRU.....2ND DEFENDANT

KALENJIN ENTERPRISES3RD DEFENDANT

LAND REGISTRAR, NAKURU4TH DEFENDANT

RULING

(Application for substitution of a deceased party; application not opposed; application allowed).

1. The application before me is that dated 22 September 2015 filed by one Jemimah Waruguru Mbuthia. It is an application brought under the provisions of Order 24 Rule 3 of the Civil Procedure Rules, 2010. The applicant wants orders that she be substituted for Mbuthia Mukuru, the 1st plaintiff who is said to be deceased.

2. To the supporting affidavit, the plaintiff has averred that she is the daughter of the said Mbuthia Mukuru. Mbuthia Mukuru died on 6 August 2014 and annexed is a copy of the Certificate of Death. She deposed that she has applied for and has been issued with a Limited Grant of Letters of Administration ad litem. The Grant was signed on 24 July 2015 but she collected it on 15 September 2015 due to inadvertence. No copy of the said grant was annexed to the supporting affidavit but a further affidavit annexing the same was filed before the application could be heard.

3. Technically, following the provisions of Order 24 Rule 3 (1) and (2), an application for substitution ought to be filed within one year of death, where there are more plaintiffs than one, otherwise the suit abates in so far as the deceased plaintiff is concerned.

4. The application herein has been filed more than one year after death. However, the proviso to Order 24 Rule 2 does allow the court to extend time if good reason has been provided. The reason given for not filing the application for substitution in time is that there was inadvertence on the part of counsel in collecting the Grant Ad Litem which was signed on 24 July 2015 but collected on 15 September 2015

after the one year had lapsed. I am unable to visit the mistakes of counsel on the applicant. In any event the application is not opposed.

5. I therefore allow the application dated 22 September 2015. I order that the suit, which had abated in so far as the 1st plaintiff is concerned, be revived. I also allow the applicant to be substituted for the deceased 1st plaintiff. I direct that the plaint be amended within 14 days to reflect the substitution.

6. I make no orders as to costs.

7. It is so ordered.

Dated, signed and delivered in open court at Nakuru this 3rd day of March, 2016.

MUNYAO SILA

JUDGE

ENVIRONMENT & LAND COURT

AT NAKURU

In presence of :

No appearance on part of M/s Rubua Ngure & Co. Advocates for the applicant

No appearance on part of the respondents.

CA: Janet

MUNYAO SILA

JUDGE

ENVIRONMENT & LAND COURT

AT NAKURU