

REPUBLIC OF KENYA

IN THE ENVIRONMENT & LAND COURT AT KERICHO

CIVIL SUIT NO. 94 OF 2009

KIGEN KANDIE.....PLAINTIFF

VERSUS

RUTH CHEMUREN..... DEFENDANT

RULING

(Application for substitution; application not opposed; application allowed)

The application before me is that **dated 5 November 2015**. It is an application said to be brought under **Order 1 Rule 10** of the **Civil Procedure Rules**, and **Sections 3 and 3A** of the **Civil Procedure Act**. It seeks orders that Ruth Chepkemai Chemuren be substituted for Cheruiyot arap Chemuren, the original defendant who is now deceased.

The suit itself was commenced on **26 November 2009** against the said Cheruiyot arap Chemuren. The case of the plaintiff is for adverse possession on various property. A Replying Affidavit to oppose the Originating Summons was filed by the said arap Chemuren. I have seen a consent filed on **20 January 2012** substituting Ruth Chepkemai Chemuren for Cheruiyot arap Chemuren who was said to be deceased. I am not sure why and how this consent was filed for by that time Ruth was not holding any letters of administration for the estate of arap Chemuren. Be as it may, vide this application, it is sought to now have Ruth come into the matter in place of the late arap Chemuren.

Annexed to the supporting affidavit is a Death Certificate and a Grant of Letters of Administration ad litem issued to Ruth.

Although the application cites **Order 1 Rule 10**, the proper rule is actually **Order 24**, specifically **Order 24 Rule 4**, which has provisions for the substitution of a deceased defendant. I also observe that vide **Order 24 Rule 4 (3)**, such application for substitution is supposed to be made within one year of death. The application herein is technically late. However, Mr. Mengich for the respondent did not oppose the application subject to costs for the reason that the application was filed late.

In exercise of my discretion, I will allow the application for substitution. I direct that the Originating Summons be amended to reflect the name of Ruth Chepkemai Chemuren as the new respondent and if need be the body of the pleadings may also be amended. I direct that this be done within 14 days from today. The costs of the application will be to the plaintiff since the application was filed late.

It is so ordered.

Dated, Signed and delivered on this 8th day of April , 2016

MUNYAO SILA

JUDGE

ENVIRONMENT AND LAND COURT

PRESENT

Mr Joshua Mutai for the Defendant/Applicant.

Mr Mengich for the Plaintiff/Respondent.