



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAKURU

ELC NO. 60 OF 2013

JOTHAM MUIRURI KIBARU.....PLAINTIFF

VERSUS

KIPRONO BEIBEI NYANGUSIDEFENDANT

RULING

(Application for substitution and to revive an abated suit; application allowed)

1. The application before me is that dated 14 August 2015 filed by one Joseph Rono. He wishes to be substituted for the existing defendant, Kiprono Beibei Nyangusi who is deceased. Kiprono died on 16 May 2013 and upon his death, the applicant sought to be granted letters of administration ad litem, which were issued on 30 December 2014. It is admitted by the applicant that the case has abated but one of the orders sought is to have the suit revived.

2. I have looked up at the suit and have seen that it was commenced by way of Originating Summons on 3 November 2005. The plaintiff is one Jotham Muiruri Kibaru and he wishes to be declared owner of the land parcel Dundori/Mugwathi Block 2/20 by way of adverse possession. According to him, he purchased this land in the year 1992 from one Simon Towett Maritim, who had in turn purchased it from the late Kiprono. The land however remained registered in the name of Kiprono and that is why he was named as defendant. The late Kiprono had already filed a Replying Affidavit through which he resisted the suit.

3. The nature of application before me is covered by the provisions of Order 24 rule 4 which is drawn as follows :-

4. Procedure in case of death of one of several defendants or of sole defendant

[Order 24, rule 4.]

(1) Where one of two or more defendants dies and the cause of action does not survive or continue against the surviving defendant or defendants alone, or a sole defendant or sole surviving defendant dies and the cause of action survives or continues, the court, on an application made in that behalf, shall cause the legal representative of the deceased defendant to be made a party and shall proceed with the suit.

(2) Any person so made a party may make any defence appropriate to his character as legal representative of the deceased defendant.

(3) Where within one year no application is made under subrule (1), the suit shall abate as against the deceased defendant.

4. I do not think that there is any contention that the cause of action has not survived the death of the late Kiprono. The cause of action still subsists. Strictly speaking the suit has abated, the application for substitution coming more than one year of death, but in my discretion, I order its revival in the interests of justice.

5. I allow this application for both substitution and revival of the abated suit. The costs shall be in the course.

6. It is so ordered.

Dated, signed and delivered in open court at Nakuru this 18th day of October 2016.

MUNYAO SILA

JUDGE

ENVIRONMENT & LAND COURT

AT NAKURU

In presence of :-

Mr. Mutonyi for plaintiff

N/A on part of M/S Kipkenei & Co. for the defendant

Court Assistant : Janet

MUNYAO SILA

JUDGE

ENVIRONMENT & LAND COURT

AT NAKURU