



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAKURU

ELC NO 160 OF 2012

JOSEPHAT MWAURA THUOPLAITNIFF

VERSUS

LOISE WAMBUI KAHENYA.....DEFENDAT

RULING

(Application for substitution of deceased plaintiff; application allowed).

1. The application before me is that dated 11 April 2014. It seeks the substitution of the deceased plaintiff with two persons, namely Ann Waithera Gatiba and Duncan Kamau Mwangi.
2. The supporting affidavit is sworn by Duncan Kamau Mwangi. He has deposed that the plaintiff died on 24 January 2013 and thereafter, himself together with Ann Waithera Gatiba, applied for letters of administration ad litem which were issued on 16 July 2013.
3. I note that in the suit, the original plaintiff had instituted suit against the defendant asking for cancellation of the titles to the land parcels Nakuru/Bahati/329 and Nakuru/Bahati/217. It is his case that the defendant acquired title through fraud and in the suit he wanted that he be registered as proprietor of the two properties. It is my view that the said claim survives the death of the deceased as any benefit of the suit will devolve to the estate of the deceased.
4. I have seen that the applicants hold letters of administration ad litem. The application to substitute has been made within 1 year as provided by Order 24. I see no reason why I should not allow the application. It is hereby allowed. I order the deceased plaintiff to be substituted with Ann Waithera Gatiba and Duncan Kamau Mwangi and henceforth, they be deemed as the plaintiffs. They are at liberty to amend the plaint within 14 days from today.
5. I make no orders as to costs.

It is so ordered.

Dated, signed and delivered in open court at Nakuru this 11TH day of June 2015.

MUNYAO SILA

JUDGE

ENVIRONMENT AND LAND COURT

AT NAKURU

In Presence of:-

Mr Mbiyu holding brief for Mr Kisila for applicant

CA: Violet

MUNYAO SILA

JUDGE

ENVIRONMENT AND LAND COURT

AT NAKURU