



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA

ELC CASE NO. 52 OF 2014

BENARD NYAMU MBURIA Alias KIARA MBURIA (Suing through the next of friend)

HUMPHREY GITUKU MBURIA PLAINTIFF

VERSUS

SAMUEL KAGOIYO NJERU DEFENDANT

LUCY WAMBUI GITUKU APPLICANT/INTENDED NEXT OF FRIEND

RULING

The applicant herein LUCY WAMBUI GITUKU has filed this application dated 16th October 2014 seeking to be appointed and substituted as a next of friend of BERNARD NYAMU MBURU Alias KIARA MBURIA. The application is supported by her affidavit in which she depones, inter alia, that the original plaintiff in this suit had filed the same through a next friend HUMPHREY GITUKU MBURIA who passed away on 3rd August 2009 and she would therefore wish to be appointed as the next of friend to have this suit finalized. Attached to her application is the death certificate of the late HUMPHREY GITUKU MBURIA confirming that indeed he died on 3rd August 2009. There is also a written consent dated 16th October 2014 signed by the applicant authorizing counsel for the applicant to use her names as next of friend.

The application is un-opposed.

I have considered the application un-opposed as it is.

Order 32 of the Civil Procedure Rules allows a person who is a next of friend of a minor or a person adjudged to be of un-sound mind to file a suit on behalf of such a person.

The application is un-opposed but from the pleadings herein, I can see that Dr. A.S.M Gatangi of Nyeri Provincial General Hospital did confirm vide a letter dated 31st May 2005 that indeed the plaintiff suffers from chronic mental illness. And although the previous next friend HUMPHREY GITUKU MBURIA died on 3rd August 2009, the original plaintiff BERNARD NYAMU MBURIA is himself still alive and therefore this suit is not caught up by the provision of **Order 24 Civil Procedure Rules** which deal with abatement of suits. The applicant has taken some five (5) years following the death of the said HUMPHREY GITUKU MBURIA to file this application and offered no application for that delay. However, there is no time limit provided under **Order 32 of the Civil Procedure Rules** within which to bring such an application. Besides, there is nothing to show that any prejudice will be caused to the defendant and there are infact injunctive orders issued by the late Khaminwa J. on 5th December 2006 injuncting the defendant from dealing with the properties subject of this suit until the same is heard and

determined.

In the circumstances, I find merit in the application dated 16th October 2014 and I grant the orders sought therein with costs in the cause.

B.N. OLAO

JUDGE

16TH JULY, 2015

16/7/2015

Before

B.N. Olao – Judge

Gichia – CC

Mr. Magee for Wanjiru for Plaintiff – present

Mr. Kamuga for Defendant – absent

COURT: Ruling delivered this 16th day of July, 2015 in open Court.

Mr. Magee for Wanjiru for Plaintiff present

No appearance for Defendant.

B.N. OLAO

JUDGE

16TH JULY, 2015