



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT OF KENYA**

**AT NAKURU**

**ELC 110 OF 2013**

**NJUGUNA MUKORA KIARO .....PLAINTIFF**

**VERUS**

**CLEMENT KAMAU MWANGI .....1<sup>ST</sup> DEFENDANT**

**EDWARD MWANGI IRUNGU .....2<sup>ND</sup> DEFENDANT**

**RULING**

***(Application for substitution; application dismissed for reason that applicant has not annexed proof of death or proof of any letters of administration).***

1. The application before me is that dated 21 November 2014. It is an application brought under Order 24 Rule 2 of the Civil Procedure Rules, 2010, and seeks the substitution of the plaintiff. In her supporting affidavit, the applicant, one Mukuhi Njuguna Mukora, has deposed that she is the widow to the plaintiff who is said to have died on 1 November 2013. She has stated that she applied for a grant ad litem which was issued to her on 26 August 2014. She has explained that she was traumatized by the death of her husband hence the fact that the application was filed 1 year and 20 days after the death of the plaintiff.

2. Although Order 24 Rule 2 has been cited, I think the matter falls under the purview of Order 24 Rule 3 which provides as follows :-

***Procedure in case of death of one of several plaintiffs or of sole plaintiff***

***[Order 24, rule 3.]***

*(1) Where one of two or more plaintiffs dies and the cause of action does not survive or continue to the surviving plaintiff or plaintiffs alone, or a sole plaintiff or sole surviving plaintiff 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 plaintiff to be made a party and shall proceed with the suit.*

*(2) Where within one year no application is made under subrule (1), the suit shall abate so far as the deceased plaintiff is concerned, and, on the application of the defendant, the court may award to him the costs which he may have incurred in defending the suit to be recovered from the estate of the deceased plaintiff:*

*Provided the court may, for good reason on application, extend the time.*

3. In his submissions, Mr. Muhia for the plaintiff submitted that the delay of 20 days is not inordinate. I agree with him that the delay is not inordinate and I would have had no problem allowing the application.

4. However, I have not seen any proof that the plaintiff is dead. There is no death certificate annexed to the application. Neither have I seen any proof that the applicant holds any grant of letters of administration, whether full or limited, which would give her capacity to continue this suit on behalf of the deceased plaintiff. These are critical documents which ought to have been filed with the application. Without the same, I cannot say that the plaintiff is dead, and neither can I say that the applicant has capacity to take over the suit.

5. I have little option but to dismiss the application. I make no orders as to costs as the respondents did not deem it fit to oppose it.

6. For the avoidance of doubt the applicant may file a proper application.

It is so ordered.

**Dated, signed and delivered in open court at Nakuru this 17<sup>th</sup> July 2015.**

**MUNYAO SILA**

**JUDGE**

**ENVIRONMENT & LAND COURT**

**AT NAKURU**

**In presence of : -**

Mr S.L.M.H Muhia for the plaintiff/applicant

N/A for M/s Oduor Henry John Advocate for the defendants/respondents.

Janet: Court Assistant

**MUNYAO SILA**

**JUDGE**

**ENVIRONMENT & LAND COURT**

**AT NAKURU**