



**REPUBLIC OF KENYA**

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

**E&L 51 OF 2012**

**Formerly HCC 88 of 2000**

**EMILY MISOI.....PLAINTIFF**

**VS**

**THE DIRECTOR SAMBU FARM & 3 OTHERS.....DEFENDANT**

***(application for substitution; application unopposed; application allowed).***

**RULING**

This is an application seeking to substitute the original 2nd defendant, Kipketer arap Songol (now deceased) with one Wilfred Kimeli Keter.

Kipketer arap Songol died on 27th April 2012. The said Wilfred Kimeli Keter applied vide Ad Litem Application No. 79 of 2013 in the High Court at Eldoret, to be granted letters of administration Ad Litem, limited for purposes of defending this suit. The application was allowed and grant of letters issued on 20th May 2013.

Order 24 allows a substitution where a party to a suit dies and the cause of action survives. The 2nd defendant in this suit was sued as a director of Sambul Farm. I am not too sure that the cause of action survives, as it seems to me that the defendant was sued in his capacity as director. But again, I may be wrong, and I guess no serious harm will be done to the parties if I allow the substitution. I have also seen that the application for substitution was filed a little out of time as Order 24 Rule 4 (3) provides that an application for substitution ought to be made within one year of death. However, the other parties have no objection to this application for substitution, and I guess no serious prejudice will be caused to either party, if I allow the application though filed out of time.

I therefore allow the application, and permit the applicant, Wilfred Kimeli Keter to be substituted in place of Kipketer arap Songol (deceased) and that he be the 2nd defendant to this suit. The suit shall proceed on that premise. I make no orders as to costs.

It is so ordered.

DATED, SIGNED AND DELIVERED THIS 26TH DAY OF NOVEMBER 2013

**JUSTICE MUNYAO SILA**

**ENVIRONMENT AND LAND COURT AT ELDORET**

***Read in open Court In the Presence of:-***

***Mr. F.O. Mukabane for the 2nd defendant / applicant***

***Mrs. L.C. Kamau h/b for Mr Chepkwony for plaintiff***