



REPUBLIC OF KENYA

Court of Appeal at Nyeri

Civil Appeal 69 of 2007

BETWEEN

FRANCIS MBUNGU KANGARU ..... 1<sup>ST</sup> APPELLANT

EPHANTUS MAINA MBUNGU ..... 2<sup>ND</sup> APPELLANT

AND

MBUGWA KAREKI ..... RESPONDENT

*(Appeal from the judgment and order of the High Court of Kenya at Embu (Khaminwa J. dated 30<sup>th</sup> January 2007*

in

H.C.C.C. NO. 39 OF 2003)

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RULING

1. The record in this appeal was lodged on 28<sup>th</sup> March 2007 and the Notice of Appeal was given on 31<sup>st</sup> January 2007 following the delivery of the judgment of the Superior Court on 30<sup>th</sup> January 2007 in **Embu HCCC No. 39 of 2003**. In the judgment, the Superior Court found in favour of **Mbugua Kareki**, the plaintiff in the suit who is the respondent in this appeal. Judgment was entered for the respondent.
2. The respondent died on 2<sup>nd</sup> November 2010.
3. The appellants sought and obtained (in favour of **Regina Wanjiru**, the widow of the respondent) from the Superior Court on 12<sup>th</sup> July 2011 in Embu H.C. Probate and Administration Cause No. **224 of 2011**, a limited Grant *ad litem* pursuant to **section 67(1)** of the Laws of Succession Act, Chapter 160 of the Laws of Kenya.
4. Regina Wanjiru Mbugwa moved to the Superior Court on 21<sup>st</sup> September 2011 to have annulled and revoked the limited Grant *ad litem* made in her favour at the behest of the Appellants. On 11<sup>th</sup> October 2012, the Superior Court dismissed her application.

5. Prior to 21<sup>st</sup> September 2011 when the respondent filed the application in the Superior Court seeking to revoke and annul the limited Grant **ad litem** in her favour, the appellants had, through their advocates, Messrs. P.M. Chirira & Company, filed in this appeal, an application by way of Notice of Motion dated 3<sup>rd</sup> August 2012 seeking an order that Regina Wanjiru Mbugwa, the widow of the deceased, be made a party in the appeal instead of the respondent who died on 2<sup>nd</sup> November 2010. This step was taken to obviate abatement of the appeal on account of the respondent's death on 2<sup>nd</sup> November 2010.

6. When the Notice of Motion came up for hearing on 2<sup>nd</sup> July 2012, it was taken out of the hearing list to await the outcome of the application in the Superior Court by Regina Wanjiru Mbugwa, seeking revocation of the limited Grant **ad litem** made to her on 12<sup>th</sup> July 2011.

7. When the Notice of Motion dated 3<sup>rd</sup> August 201 came up for hearing before me today, Mr. Muchira, learned counsel for the appellants, informed the court that the Superior Court had declined to revoke the Limited Grant **ad litem** made to Regina Wanjiru Mbugwa and dismissed the latter's application on 11<sup>th</sup> October 2012. Mr. Muchira furnished the Court with the Ruling by the Superior Court and submitted that there was no objection by the advocate for the respondent to the order for substitution.

8. Miss **Ann Thungu**, the learned counsel for the respondent, told the court that her client did not object to the appellants' Notice of Motion or the order for substitution.

9 Under **Rule 99(1)** of the Rules of this Court, an appeal does not abate on the death of the appellant or the respondent and the court is obliged to cause to be made a party the legal representative of the deceased on the application of any interested party.

10. The appellants have applied to have the widow of the deceased made a party in place of her husband who died on 2<sup>nd</sup> July 2010. There is a Limited Grant **ad litem** made to Regina Wanjiru Mbugwa, the widow of the deceased. She is therefore the legal representative of her deceased husband.

11. As the application is not opposed and as the rules so dictate and as it is also in the interest of justice that the order sought be made, I allow the application by the Notice of Motion dated 3<sup>rd</sup> August 2011 and grant an order that Regina Wanjiru Mbugwa, the legal representative of the respondent who died on 2<sup>nd</sup> November 2010 is hereby made a party and shall be the respondent in this appeal instead of **Mbugua Kareki**, deceased. The costs of the application shall be in the appeal.

**Dated at Nyeri this 7<sup>th</sup> day of February 2013.**

**G.**

**B.**

**M.**

**KARIUKI**

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**JUDGE OF APPEAL**

*I certify that this is a true copy of the original*

**DEPUTY REGISTRAR**