



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT NAIROBI**

**MILIMANI LAW COURTS**

**E.L.C. CASE NO. 257 OF 2010**

**MOHAMMED SADIQUE ADAM.....PLAINTIFF**

**VERSUS**

**JOHN NJUGUNA NDUATI.....1<sup>ST</sup> DEFENDANT**

**JOYCE WANJIRU KAMAU.....2<sup>ND</sup> DEFENDANT**

**COMMISISIONER OF LANDS.....3<sup>RD</sup> DEFENDANT**

**RULING**

Through the application dated 5/12/2017 filed in court on 1/2/2018, the Plaintiff seeks to set aside the order made on 26/1/2015 dismissing his suit. The application is made on the grounds that the suit was dismissed when the Plaintiff failed to attend court. The Plaintiff died on 26/4/2014. His son, Habib Mohammed Sadique Adam wishes to substitute him as a Plaintiff. He obtained letters of administration *ad litem* on 22/7/2015.

The 1<sup>st</sup> Defendant opposed the application arguing that it was *res judicata* and that the suit had abated in April, 2015. The 2<sup>nd</sup> Defendant also opposed the application through the replying affidavit filed in court on 2/3/2018. She set out facts on the Plaintiff's failure to prosecute the case leading to the dismissal of the suit on 27/1/2015. The 2<sup>nd</sup> Defendant avers that the deceased Plaintiff ought to have been substituted within a year of his death and that no reasons were given by the Plaintiff for the failure to substitute the Plaintiff before the suit abated. The Defendants maintained that a suit that has abated does not exist. They further argued that the delay of 3 years and 10 months in bringing this application was inordinate.

The court has considered the submissions of the parties and agrees with the Defendants that here was inordinate delay which is inexcusable in bringing this application. No reasons were given for the long delay in substituting the Plaintiff yet letters of administration were issued to the proposed Plaintiff way back in 2015.

The application dated 5/12/2017 is dismissed with costs to the Defendants

Dated and delivered at Nairobi this 28<sup>th</sup> day of November 2018.

**K. BOR**

**JUDGE**

**In the presence of: -**

Ms. C. Karimi holding brief for Mr. McCourt for the 2<sup>nd</sup> Defendant

Mr. V. Owuor- Court Assistant

No appearance for the Plaintiff, 1<sup>st</sup> and 3<sup>rd</sup> Defendants



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