

**IN THE SUPERIOR COURT OF JUDICATURE
IN THE COURT OF APPEAL**

**CORAM - OSEI, J.A. [PRESIDING]
ANIM, J.A.
APALOO, J.A.**

**CIVIL APPEAL
NO. H1/262/2004
26TH JULY, 2006**

**AMORA MUMUNI {SUBSTITUTED ... PLAINTIFFS/APPELLANTS
FOR SUMANI MUNJE} etc.**

V E R S U S

ALHAJI ADAMU IDDRISU etc. ... DEFENDANTS/RESPONDENTS

R U L I N G

APALOO, J.A. - This ruling emanates from a preliminary objection filed in this Court pursuant to Rule 16 of C.I. 19, the Court of Appeal Rules as amended.

The preliminary objection to the hearing of the appeal stated as follows:-

“(1) That at all times material to the date when the Notice of Appeal which is the basis of the appeal before this honourable Court was filed, the Solicitors who filed the same had no authority to file it, the party on whose behalf the said Notice of Appeal was filed having been deceased

a n d

(iii) That purported appellant has neither paid nor made an attempt to pay costs awarded against his predecessor in the suit now on appeal before this Court.”

In his submissions Counsel for the Defendants/Respondents contended that the suit now on appeal before the Court was commenced at the High Court by one Sumani Munje now deceased. He died in Wa on 18/01/03. The notice of Appeal was filed on 22/01/03 pursuant to the judgment of the High Court dated 13/01/03. It is the view of the

Respondents that the substitution of Amora Mumuni as Plaintiff for the dead Sumarni Munje on 19/05/03 was belated rendering the notice of appeal filed prior to the substitution a nullity.

Counsel for the appellant submitted that the suit was commenced by the deceased Plaintiff in his representative capacity and not in his personal capacity. He was the head and representative of the Puohuyiri Family of Wa. He stressed that the statement of claim disclosed that “the Plaintiff is the head and lawful representative of the Puohuyiri family and owners of the land in dispute” and accordingly as head of family and a nominal Plaintiff, the family being the real owners of the land and therefore the real Plaintiffs, Respondents arguments are not tenable. According to Appellants it was the family, the real Plaintiff in the action that instructed Counsel to file the appeal on its behalf.

Indeed there is no doubt that when the lower Court delivered its decision on 13/01/03 Sumani Munje was alive. He died five days later on 18/01/03. There is no doubt also that on 22/01/03 when the appeal was filed no order for substitution had been obtained for the deceased Plaintiff/Appellant. The question to be asked at this stage ought to lead to the solution of the objection raised. The question who is the Plaintiff on 22/01/03 when the appeal was filed is material.

Our law has provided that certain suits including land, shall survive the Plaintiff upon his death whether nominal or representative. Provisions have been made in law for the continuation of such cases in the event of death. The person known and identified as the Plaintiff ought to be replaced and substituted by a living person before any fresh step is taken in the event of death. This is elementary procedure and Counsel for the Plaintiff/Appellant knew of this requirement hence his application for the substitution albeit belated.

It is obvious therefore that counsel’s failure to obtain an order for substitution of the dead Plaintiff prior to filing the notice of appeal renders the appeal ineffectual and a nullity.

Case law is replete with principles governing persons who may sue or be sued in nominal or representative capacities. See *Bukuruwa Stool Vrs. Kumawu Stool* {1962} 1 GLR 353. See also *Kwan Vrs. Nyieni & Anor.* {1959} GLR 67. The principles are clear

that at all times, for the prosecution of suits a living person with capacity must be in existence. It begs the question and twists the law to say that as a family, upon the death of the head of family or representative, proceedings could continue without substitution of the deceased party since the family is the real party.

The preliminary objection raised by the Respondents is anchored in good law and the appeal is dismissed as a nullity. The second leg of the objection is frivolous as refusal to pay costs awarded in the Court below cannot constitute a bar to an appeal.

R.K. APALOO
JUSTICE OF APPEAL

J.A. OSEI
JUSTICE OF APPEAL

S.Y. ANIM
JUSTICE OF APPEAL

COUNSEL - MR. INUSA FUSEINI FOR PLAINTIFF/RESPONDENT.

MR. COSMOS APENGNO FOR DEFENDANT/APPELLANT.

~eb~

Judicial Training Institute