



**Limbe v Wandhere & another (Environment & Land Case
E001 of 2021) [2023] KEELC 16456 (KLR) (23 March 2023) (Ruling)**

Neutral citation: [2023] KEELC 16456 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT SIAAYA
ENVIRONMENT & LAND CASE E001 OF 2021**

**AY KOROSS, J
MARCH 23, 2023**

BETWEEN

JOHN OCHIENG LIMBE PLAINTIFF

AND

DAVID OTIENO WANDHERE 1ST DEFENDANT

ODERO OCHIENG 2ND DEFENDANT

RULING

1. When this matter came up for hearing before me on February 1, 2023 and after PW 1 had taken the stand, it emerged the 2nd defendant in this case died in the year 1977. The person who had been attending court as the 2nd defendant was his son Charles Adego Odero.
2. It is trite law a suit against a deceased person is a nullity from inception and a legal representative of his estate cannot be joined in the proceedings. The import of such a suit is that it is as if no suit had ever been filed against the deceased person. See *Viktar Maina Ngunjiri & 4 others v Attorney General & 6 others* [2018] eKLR where the court cited with approval the Indian persuasive decision of *Pratap Chand Mehta v Chrisna Devi Mehta* AIR 1988 Delhi 219.
3. It is the finding this court the suit against the 2nd defendant is a nullity and I hereby strike it out against him.
4. This court has noted the cause of action against the 1st defendant is on land parcel No South Gem/ Ndori 814 which is registered in the names of the 1st defendant and the deceased Odera Ochieng as tenants in common in equal shares. The cause of action is on adverse possession which is maintainable against the registered owners; in this case the 1st defendant and the estate of the deceased Odera Ochieng. See the Court of Appeal decision of *Chevron (K) Ltd v Harrison Charo Wa Shutu* [2016] where the court stated: -



‘It is a settled principle that a claim for adverse possession can only be maintained against a registered owner...’

5. As tenants in common, the 1st defendant and the deceased Odera Ochieng held concurrent ownership simultaneously where each person held an individual and undivided interest in the suit property.
6. Considering the nature of the claim and, circumstances of ownership, it is the finding of this court it would be an exercise in futility for this court to proceed with the hearing of this case against the 1st defendant. It is for these reasons that I hereby strike out the entire suit. There shall be no orders as to costs.

DELIVERED AND DATED AT SIAYA THIS 23RD DAY OF MARCH 2023.

HON. A. Y. KOROSS

JUDGE

23/03/2023

Ruling delivered virtually through Microsoft Teams Video Conferencing Platform in the Presence of:

In the Presence of:

Mr. Ariho h/b for Mr. Ogonda for the Plaintiff

The 1st defendant acts in person

Court assistant: Ishmael Orwa

