



**Kariuki v Makori & 5 others (Environment & Land Case
368 of 2016) [2023] KEELC 16493 (KLR) (21 March 2023) (Ruling)**

Neutral citation: [2023] KEELC 16493 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISII
ENVIRONMENT & LAND CASE 368 OF 2016**

M SILA, J

MARCH 21, 2023

BETWEEN

JAMES KARIUKI PLAINTIFF

AND

JAMES MAKORI 1ST DEFENDANT

EVANS OMWANDO 2ND DEFENDANT

EVANS OMBEBE 3RD DEFENDANT

TOM BASISI 4TH DEFENDANT

MEKUBO EVANS 5TH DEFENDANT

ISOE OGECHI 6TH DEFENDANT

RULING

1. The application before me is that dated November 21, 2022 filed by one Wanjiku Ngige who wishes to substitute James N. Kariuki, the plaintiff herein, who is said to be deceased. The applicant also seeks an order of extension of time for the period of substitution, and upon the prayers being granted, she be deemed as the plaintiff suing on behalf of the estate of James N. Kariuki (deceased).
2. The supporting affidavit avers that the plaintiff died on November 27, 2021 while this suit was still pending; and that the applicant has taken out a grant of letters of administration in respect of the estate and desires to continue the suit on behalf of the estate of the deceased.
3. The application is not opposed and I have given it due consideration.
4. I observe that the plaintiff commenced this suit through a plaint which was filed on November 6, 2015. In the plaint, the plaintiff averred that the land parcel Majoge/Kanyimbo/104 (the suit land) was charged by the previous proprietors to Industrial and Commercial Development Corporation



(ICDC). The loan was not paid subsequent to which ICDC sold and transferred the suit land to the plaintiff on July 15, 1978. It is pleaded that in July 2016, the plaintiff went to the suit land and found that the defendants had constructed a house therein and were tilling the land. In the suit, the plaintiff sought an order for the eviction of the defendants.

5. To this application, the applicant has annexed a copy of a Certificate of Death of the plaintiff. It shows that he died on November 27, 2021. She has also annexed a copy of a grant of letters of administration issued in the High Court at Nakuru, Succession Cause No. E64 of 2022, in the matter of the estate of James Ngigi Kariuki (deceased). From it, I can see that on September 12, 2022, the applicant was granted letters of administration to administer the estate of the deceased. The cause of action does survive the death of the deceased plaintiff and can be continued for the benefit of his estate.
6. Although in the application the applicant sought an extension of time for the period of substitution, my view is that the application is within the one-year period prescribed in order 24 rule 3. The applicant died on November 27, 2021 and this application was filed on November 23, 2022 before lapse of one year and the application is therefore within time.
7. Given the above, I do allow this application. I order that the deceased plaintiff be substituted by the applicant. The plaint can be amended accordingly to reflect this position within the next 14 days.
8. I make no orders as to costs.
9. Orders accordingly.

DATED AND DELIVERED THIS 21 DAY OF MARCH 2023

JUSTICE MUNYAO SILA

JUDGE, ENVIRONMENT AND LAND COURT

AT KISII

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