



Muchiri & another (Suing as the legal representatives of the Estate of Benson Mugweru Muchiri) v Kageenu & another (Environment & Land Case 49 of 2019) [2023] KEELC 17032 (KLR) (24 April 2023) (Ruling)

Neutral citation: [2023] KEELC 17032 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND CASE 49 OF 2019
MN GICHERU, J
APRIL 24, 2023**

BETWEEN

**KELVIN MUGWERU MUCHIRI 1ST PLAINTIFF
DAN MUNDIA MUCHIRI 2ND PLAINTIFF
SUING AS THE LEGAL REPRESENTATIVES OF THE ESTATE OF BENSON
MUGWERU MUCHIRI**

AND

**LILIAN REGERIA KAGEENU 1ST DEFENDANT
CAROLINE NKATHA 2ND DEFENDANT**

RULING

1. This ruling is on the Notice of Motion dated September 14, 2022. The motion which is brought under Section 80 of the *Civil Procedure Act*, Order 45, Rules 1 and 3 of the *Civil Procedure Rules* seeks a review of the ruling of this court dated May 7, 2020 which directed the Defendant to file a replying affidavit instead of a defence and counterclaim. It also seeks to have the defense and counterclaim dated and filed on February 1, 2022 be deemed as duly filed and served.
2. The motion is supported by nineteen grounds, an affidavit and two annexures. The gist of the three materials is that the procedure of originating summons is not appropriate for determining contentious disputes and this is one of the reasons why the rules gives the court power to convert proceedings commenced by originating summons into a plaint. It is further contended that the Plaintiff will suffer no prejudice if this application were to be allowed and it is in the interest of justice that this application be allowed.
3. The motion is unopposed by the Plaintiffs' counsel.



4. Upon consideration of the motion dated September 14, 2022, I find that it has merit because I am convinced that this suit is contentious and the simple procedure in originating summons is not appropriate in all the circumstances of this case. Notice of motion allowed in terms of prayers 1, 2 and 3. Cost in the cause.

5 It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 24TH DAY OF APRIL, 2023.

M.N. GICHERU

JUDGE

