



**Gitonga & 4 others v Jediel & another (Environment & Land Case  
2 of 2021) [2023] KEELC 17432 (KLR) (17 May 2023) (Ruling)**

Neutral citation: [2023] KEELC 17432 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MERU  
ENVIRONMENT & LAND CASE 2 OF 2021**

**CK NZILI, J**

**MAY 17, 2023**

**BETWEEN**

**JACKSON KIOGORA GITONGA ..... 1<sup>ST</sup> APPLICANT  
LAWRENCE MBAABU ..... 2<sup>ND</sup> APPLICANT  
MARY EUNICE TIRINDI TERSIO ..... 3<sup>RD</sup> APPLICANT  
ROSE CIAKUTHII ..... 4<sup>TH</sup> APPLICANT  
FRANKLIN MUTEMBEI ..... 5<sup>TH</sup> APPLICANT**

**AND**

**JACOB MUTHAMIA JEDIEL ..... 1<sup>ST</sup> RESPONDENT  
JACKSON RUGENDO ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. The court by an application dated March 8, 2023 is asked to allow one Royford Murithi Jediel to substitute the 1<sup>st</sup> defendant who passed on January 4, 2017. The application is based on the grounds on its face and the supporting affidavit of Jackson Kiogora Gitonga, the 1<sup>st</sup> applicant sworn on March 8, 2023. It is averred that the 1<sup>st</sup> defendant passed on January 4, 2017 and left behind no surviving spouse or heirs to his estate except the proposed defendant as a brother. The applicant averred that the cause of action has survived despite the death and therefore the court should join the proposed defendant so that the suit can be prosecuted. The application is also supported by an affidavit sworn by the said Royford Murithi Jediel on the even date confirming the contents of the applicants' application. The application is not opposed by the respondents.
2. Order 24 Rule 4 (4) of the *Civil Procedure Rules* provides that where a defendant passes on, the plaintiff shall within one year from the date of death seek for the substitution of the deceased defendant with a legal representative if the cause of action survives.



3. In this suit, at paragraph 5 of the plaint, it was averred that the 1<sup>st</sup> defendant was the registered owner of LR No Igoji/Mweru/1527 as per a title deed dated May 14, 2014.
4. In the defence and counterclaim that the 2<sup>nd</sup> defendant filed on September 29, 2015, it averred that the 2<sup>nd</sup> defendant bought LR Nos 1560 and 1562 from the 1<sup>st</sup> defendant on September 2, 2009 and became the new owner. The 1<sup>st</sup> defendant filed a defence dated January 23, 2016 and confirmed both the sale and the transfer. A certificate of search dated August 24, 2015 attached to the suit also confirmed the above ownership changes.
5. It is not in dispute that 1<sup>st</sup> defendant passed on on January 4, 2017. The plaintiffs were aware of this. They ought to have moved the court before the expiry of the statutory one-year. The proposed defendant possesses no letters of grant to represent the estate of the deceased 1<sup>st</sup> defendant.
6. It is not enough for him to consent to be joined in this suit. The Law of Succession Act must be followed. This court lacks the mandate to appoint him as a legal representative and by extension join him as a party to represent the estate of the 1<sup>st</sup> defendant without the requisite authority from a probate court.
7. The suit against the 1<sup>st</sup> defendant has thus abated through the effluxion of time and by operation of the law. Unless leave is sought and granted, time extended to revive the suit against the estate of the deceased is sought and a joinder made under Order 24 Rule 7 of the Civil Procedure Rules, I find the application lacking merits. The same is dismissed with costs.

**DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT MERU ON THIS 17<sup>TH</sup> DAY OF MAY 2023**

**In presence of**

C.A John Paul

Gikunda Anampiu for respondent

**HON. C.K. NZILI**

**ELC JUDGE**

