



**Oatwa v Miroro & 2 others (Environment & Land Case
445 of 2015) [2023] KEELC 17466 (KLR) (16 May 2023) (Ruling)**

Neutral citation: [2023] KEELC 17466 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISII
ENVIRONMENT & LAND CASE 445 OF 2015**

M SILA, J

MAY 16, 2023

BETWEEN

ZABLON MOSE OATWA PLAINTIFF

AND

JOSEPH MIRORO 1ST DEFENDANT

TRUPHENA MORAA SANGOI 2ND DEFENDANT

MORANGA SANGOI 3RD DEFENDANT

RULING

1. The application before me is that dated 15 June 2022 filed by one Moranga Sangoi pursuant to the provisions of Order 24 rule 3 (1) of the *Civil Procedure Rules*. The applicant wishes to substitute the 2nd defendant/counterclaimant, one Truphena Moraa Sangoi, as she is deceased. The application is supported by an initial affidavit filed with the application and a supplementary affidavit which was subsequently filed so as to annex the Certificate of Death of the said Truphena Moraa Sangoi.
2. I have gone through the application and the record. I observe that the suit was commenced through a plaint filed on 30 September 2015 with one Joseph Miroro Sangoi as 1st defendant and Truphena Moraa Sangoi as 2nd defendant. The plaintiff contends that he is the rightful owner of the land parcel Nyaribari Masaba/Bokimotwe I/1600 which he purchased from one David Osoro Mbegera. It is claimed that Mr. Mbegera had in turn bought the land from the late husband to the deceased 2nd defendant and father to the 1st defendant. The plaintiff complained that the two defendants were laying claim to the land stating that it belongs to them and had prevented him from developing it. He pleaded that the defendants had no right to trespass into the land. In the suit, the plaintiff sought orders to have the two defendants permanently restrained from the suit land and costs. The defendants filed a defence and counterclaim. In the counterclaim they seek orders to be declared to have obtained title to the suit land by way of adverse possession.



3. The present application avers that the 2nd defendant died on 17 December 2020. The applicant states that he obtained letters of administration ad litem on 31 May 2022 and now wishes to substitute the deceased 2nd defendant.
4. The plaintiff did not file anything to oppose the application, and indeed, Mr. Okenye, learned counsel for the plaintiff, informed court that his client does not oppose the application.
5. I have given the application due consideration. I can see that the deceased died on 17 December 2020. Pursuant to Order 24 Rule 3 and 4 an application for substitution needed to be filed within one year of death or else the suit abates. I observe that one year from the demise of the 2nd defendant had lapsed and the suit thus abated by operation of law. The court however has discretion to extend time under Order 24 Rule 7 to revive an abated suit if sufficient cause is shown. I have not really been given any reasons why the application for substitution was not filed within one year as prescribed. However, since there is no objection to the application, I will exercise my discretion in favour of the applicant.
6. I allow the application. The 2nd defendant is hereby substituted by the applicant and the applicant will continue the suit on behalf of the estate of the 2nd defendant.
7. I make no orders as to costs.
8. Orders accordingly.

DATED AND DELIVERED AT KISII THIS 16TH DAY OF MAY, 2023

JUSTICE MUNYAO SILA

JUDGE,

ENVIRONMENT AND LAND COURT AT KISII

