



REPUBLIC OF KENYA



**KENYA LAW**  
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**Njogu (Suing as the Administrator of the Estate of the Late Waiganjo Muriithi) v Kanyago & 6 others (Environment & Land Case 21 of 2017) [2023] KEELC 17326 (KLR) (11 May 2023) (Ruling)**

Neutral citation: [2023] KEELC 17326 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA  
ENVIRONMENT & LAND CASE 21 OF 2017**

**JM MUTUNGI, J**

**MAY 11, 2023**

**BETWEEN**

**GRACE WAIRIMU NJOGU ..... APPLICANT  
SUING AS THE ADMINISTRATOR OF THE ESTATE OF THE LATE  
WAIGANJO MURIITHI**

**AND**

**ANTHONY MURAGE MUTOGI ALIAS KANYAGO ..... 1<sup>ST</sup> DEFENDANT  
AGOSTINE MUNGERE MUTONGU ..... 2<sup>ND</sup> DEFENDANT  
ESTHER WARUI MUGO ..... 3<sup>RD</sup> DEFENDANT  
STEPHEN MURAGE ..... 4<sup>TH</sup> DEFENDANT  
FRASIAR NYAWIRA NGACHA ..... 5<sup>TH</sup> DEFENDANT  
PETER MURIITHI KINYUA ..... 6<sup>TH</sup> DEFENDANT  
JANE WANJIKU MURIITHI ..... 7<sup>TH</sup> DEFENDANT**

**RULING**

1. The plaintiff/applicant vide a notice of motion dated November 14, 2019 brought under order 1 rule 10, order 24 rule 4 & 7 prays for orders:-
  - 1) That the Court do revive the case against the 2<sup>nd</sup> Defendant and substitute the deceased 2<sup>nd</sup> Defendant with Rose Muthoni Mungere and Nancy Wangithi Mungere.
  - 2) That costs of the suit be provided for.



2. The Applicant explained that the 2<sup>nd</sup> Defendant died on 4/8/2018 and that she had to take out citation proceedings vide Kerugoya CM Succ Cause No. 261 of 2018 to have Rose Muthoni Mungere & Nancy Wangithi Mungere appointed administrators of the deceased estate. The Letters of Administration were issued to the two on 2<sup>nd</sup> September, 2019 by which time the period of one year had lapsed since the death of the 2<sup>nd</sup> Defendant. The Plaintiff averred that it took sometime to have the Letters of Administration issued which explained the delay in making the application for the substitution of the 2<sup>nd</sup> Defendant.
3. The persons intended to be substituted in place of the 2<sup>nd</sup> Defendant filed grounds of opposition dated February 3, 2020. They argued that the suit against the 2<sup>nd</sup> Defendant abated on 5<sup>th</sup> August, 2019 and contended that no sufficient reason had been given that prevented the Plaintiff from prosecuting the suit before the suit abated. Further the intended representatives of the 2<sup>nd</sup> Defendant contended the claim against the 2<sup>nd</sup> Defendant had become time barred by the time the suit was filed.
4. I have considered the application, the Affidavit in support and the grounds of opposition filed on behalf of the representatives appointed to administer the Estate of the deceased 2<sup>nd</sup> Defendant. Considering the Plaintiff had to cite the Respondents before they could agree to take out Letters of Administration to the estate of the deceased 2<sup>nd</sup> Defendant, I do not consider there was inordinate delay in applying for substitution. From the Affidavit of service of citation filed as an annexure to the application, it is evident that the Plaintiff cited the Respondents in October, 2018 soon after the 2<sup>nd</sup> Defendant had died in August, 2018. The application for substitution was filed on 15/11/2019 following the issue of the grant of Letters of Administration Intestate to the Respondents on 2<sup>nd</sup> September, 2019. The delay of 2 months in filing the application from the date of issue of the letters of Administration cannot be said to be inordinate or in excusable considering that further the Plaintiff could not have obtained copy of the same on the same day they were signed by the Court. I therefore, find there is sufficient justification to warrant the court to extend the period for applying for the substitution of the 2<sup>nd</sup> Defendant and revive the suit against the 2<sup>nd</sup> Defendant.
5. The other grounds the Respondents have put forth in opposing the application for substitution go to the merits of the suit which the parties will canvass during the trial. I accordingly allow the Plaintiff's application in terms of prayer (1) of the Notice of Motion dated November 14, 2019. The costs of the application will be in the cause.
6. The suit is fixed for mention on 7/6/2023 for pre-trial directions. Any parties who have not complied to ensure compliance by then.

**RULING DATED, SIGNED AND DELIVERED THIS 11<sup>TH</sup> DAY OF MAY 2023.**

**JOHN M. MUTUNGI**

**E.L.C -JUDGE**

