



**Ayiecha v Okero & another (Environment & Land Case
14 of 2021) [2023] KEELC 18406 (KLR) (29 June 2023) (Ruling)**

Neutral citation: [2023] KEELC 18406 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISII
ENVIRONMENT & LAND CASE 14 OF 2021**

**M SILA, J
JUNE 29, 2023**

BETWEEN

BANCHIRI MORAA AYIECHA PLAINTIFF

AND

PACIFICAH KEMUNTO OKERO 1ST DEFENDANT

VICTORIA KEMUNTO OKERO 2ND DEFENDANT

(Application for substitution of the deceased plaintiff and other orders; application dismissed as applicant not holding any grant in respect of the estate of the deceased plaintiff)

RULING

1. For determination is an amended notice of motion filed on 26 August 2022 on behalf of the plaintiff by one Andrew Mokora. It seeks four substantive orders, being firstly, that the law firm of M/S SED Legal LLP be allowed to come on record for the plaintiff, secondly, that the plaintiff, who is said to be deceased, be substituted by the said applicant Andrew Mokora, and thirdly, that there be issued an order of temporary injunction to restrain the defendants from selling, trespassing or dealing with the land parcel Kisii/Wanjare/Bokeire/194; and fourthly that the Land Registrar be ordered to remove the caution lodged by one Patrick Okero (deceased) registered in the title of the land parcel Kisii/Wanjare/Bokeire/194.
2. The grounds upon which the application is made include the reasons that judgment in this matter was entered on 11 January 2011 in favour of the now deceased plaintiff which judgment allowed the plaintiff's suit for adverse possession over the land parcel Kisii/Wanjare/Bokeire/194; that the plaintiff however died before the property could be transferred to her; and that the respondents have illegally entered into a sale agreement to dispose of the suit land thus they need to be restrained by an order of injunction.



3. In the supporting affidavit to this application, the applicant has deposed that the deceased plaintiff is his mother and that she died on 13 December 2020. A copy of the certificate of death is annexed. He has further deposed that the deceased plaintiff and himself, jointly held a grant of letters of administration for the estate of the late Joana Ayiecha alias Ayiecha Akuma, who is his late father. He has annexed a grant of letters of administration in respect of the estate of the late Joana Ayiecha. He continues to depose that it was his late father, Joana, who was the owner of the suit land and that he purchased it from the husband of the two respondents. He avers that upon the demise of his father, his late mother filed this suit and that she filed it on behalf of the estate of his late father. He deposes that the suit land is yet to be distributed to the beneficiaries because the respondents are yet to execute the transfers to effect the judgment. He has added that he conducted a search which shows a caution registered by the late Patrick Okero Marube, the original owner of the land, and it is this which he wants lifted.
4. Nothing was filed in response to the application.
5. I have considered the application and the supporting affidavit and gone through the record of the court. I observe that the deceased plaintiff commenced this suit through an Originating Summons filed on 23 November 2005. She sued Pacificah Kemunto Okero and Victoria Kemunto Okero who were the widows and administrators of Patrick Okero Marube (deceased). The plaintiff sought orders to be declared owner of the suit land by way of adverse possession which land was registered in the name of the said Patrick Okero Marube (deceased). The case was heard and judgment delivered on 17 January 2011. The judgment was in favour of the plaintiff. There is absolutely nothing in the suit to suggest that the plaintiff was filing this suit as an administrator of the estate of the late Joana Ayiecha. As far as I can see, the plaintiff filed this suit on her own account, and judgment was specifically for her benefit, and not the benefit of the estate of the late Joana Ayiecha. It counts for nothing that the applicant has displayed a grant in favour of the late Joana Ayiecha, which is in his name and that of the now deceased plaintiff, for the said grant is completely irrelevant to this case. Nowhere did Joana Ayiecha feature in this case as plaintiff or beneficiary of the judgment. The plaintiff is noted to be Banchiri Moraa Ayiecha and the benefit of this judgment is to her estate and not the estate of the late Joana Ayiecha. Without holding a grant of letters of administration in respect of the estate of Banchiri Moraa Ayiecha, the applicant has absolutely no capacity to file this application.
6. For the above reasons, it is clear to me that this application has been filed by a stranger and the only remedy it deserves is to be dismissed. It is hereby dismissed, but since nothing was filed in response to it, I make no orders as to costs.
7. Orders accordingly.

DATED AND DELIVERED AT KISII THIS 29 DAY OF JUNE 2023.

JUSTICE MUNYAO SILA

JUDGE,

ENVIRONMENT AND LAND COURT AT KISII

