



Matenjwa & another (Suing as the Personal Representatives of the Estate of Onesmus Matenjwa Kuria) v Joreth Limited & 2 others (Environment & Land Case 135 of 2012) [2023] KEELC 20968 (KLR) (24 October 2023) (Ruling)

Neutral citation: [2023] KEELC 20968 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 135 OF 2012
MD MWANGI, J
OCTOBER 24, 2023**

BETWEEN

ELIZABETH WANJIRU MATENJWA 1ST PLAINTIFF

MICHAEL N. NJUGUNA 2ND PLAINTIFF

**SUING AS THE PERSONAL REPRESENTATIVES OF THE ESTATE OF
ONESMUS MATENJWA KURIA**

AND

JORETH LIMITED 1ST DEFENDANT

ESTENJER INDUSTRIES LIMITED 2ND DEFENDANT

LOYFORD MWITI KUBAI 3RD DEFENDANT

RULING

Background

1. The Applicants herein are Mathangani Wanyiri Kihoro and Ndirithi Matenjwa, the personal representatives of the Estate of Onesmus Matenjwa Kuria. The Applicants in their application dated 3rd August 2023 have sought for orders that they be granted leave to replace the late Elizabeth Wanjiru Matenjwa and Michael Ndung'u Njuguna respectively, as the Plaintiffs in this matter on behalf of the Estate of Onesmus Matenjwa Kuria.
2. The application is premised on the Supporting Affidavits of the Applicants both deponed on the 3rd August, 2023.
3. The Application was opposed by the 1st and 3rd Defendants. The 3rd Defendant filed grounds of opposition dated 20th September, 2023. The 3rd Defendant contends that the application is fatally



- defective and devoid of merit stating that there is no evidence to prove that the Applicants are personal representatives for the deceased plaintiffs.
4. The 1st Defendant on the other hand filed a Preliminary Objection dated 21st September, 2023. The Preliminary Objection is premised on the grounds that:
 - a. The application is incompetent, malicious, fatally defective, bad in law, misconceived, frivolous and an abuse of this Honourable Court's process.
 - b. That the Applicants are not personal representatives of the estate of the late Elizabeth Wanjiru Matenjwa and Michael N. Njuguna and therefore lack locus standi to lodge the instant application.
 - c. That the Applicants are therefore in contempt of the directions of this Honourable Court and the instant application is an overt waste of precious and scarce judicial time.
 - d. In the upshot, the application dated 3rd August, 2023 should forthwith be dismissed with costs for reasons advanced above.
 5. The application was canvassed by way of oral submissions on the 27th September, 2023. Counsel for the Applicants, Mr. Wanyiri Kihoro submitted that what they seek is substitution. In support of the application they have attached a certificate of confirmation of grant in the estate of Onemus Matenjwa Kuria.
 6. Counsel for the 1st Defendant restated the grounds raised in the Preliminary Objection. He referred to the court's directions of 14th November, 2022 when the court directed the counsel for the Plaintiff to file a formal application for substitution. He avers that to date that has not happened. The Plaintiffs proceeded to file the application now before the court. He relied on the case of *Julian Adoyo Ogonga v Francis Kiberenge* (Misc. App 119 of 2015) cited in *Halima Hussein Edena & 2 Others v Habib Hussein & 5 Others* (Misc. Succession Cause No. E001 of 2022) in which the court stated that a party without locus standi lacks the right to institute or maintain a suit even where a valid cause of action subsists.
 7. It was his submission that locus relates to the legal capacity of a party. The impact is comparable to a court acting without jurisdiction. Since the Applicants have not been appointed as personal representatives of the Estates of the deceased, they lack the locus standi. He prayed for dismissal of the application with costs to the 1st Defendant.
 8. On his part, the 3rd Defendant's Counsel restated their grounds of opposition to the application. She submitted that the application is fatally defective on the face of it, as drafted and lacks merit. It is a sham for the reason that the purported parties lack legal capacity to do so. They do not have the Letters making them legal representatives of the Estate of Matenjwa Kuria. The application is therefore defective. She submitted that the Applicants had not attached a death certificate and letters of administration to support their application. The Applicants had not discharged the legal burden of proof in accordance with Section 107, 108 and 109 of the *Evidence Act*.
 9. Finally, she argued that the application was devoid of merit and prayed for its dismissal. There is no proof of death and Letters of Administration. She cited the case of *Njuguna Mukora Kiaro v Clement Kamau Mwangi & Another* (2015) eKLR in which an application for substitution was dismissed for want of proof of death or letters of administration.
 10. In rebuttal, Counsel for the Applicant submitted that the Applicants have been issued with a grant in the High Court, Family Division. The applicants are therefore proper replacements for Wanjiru Matenjwa and Michael Njuguna. They have complied with the provisions of Order 24 Rule 2 and 3 of



the Civil Procedure Rules and Section 71 of the Law of Succession Act. He submitted that the Preliminary Objection had not raised an issue of law.

Issues for Determination

11. I have considered the application herein, the responses thereto and the submissions filed by the parties, the issue that commends itself for determination is whether the Applicants merit the prayers sought in their application.

Analysis and Determination

12. It is appropriate first and foremost to put the application before the court in its proper context. Elizabeth Wanjiru Matenjwa and Michael N. Njuguna were Plaintiffs in this case in their capacities as the administrators of the estate of Onesmus Matenjwa Kuria. Upon their death therefore, their replacements can only be other administrators of the estate of Onesmus Matenjwa Kuria; not the administrators of the estate of Elizabeth Wanjiru Matenjwa and Michael N. Njuguna. This case was originally instituted by Onesmus Matenjwa Kuria. It is his estate therefore that should continue with the suit.
 13. The Applicants have filed letters of Administration confirming that are administrators of the estate of Onesmus Matenjwa Kuria that is the certificate of confirmation of grant in the estate of Onesmus Matenjwa Kuria rectified by the High Court in the family division Succession Cause 162 of 2010 on 4th July 2023 and filed in this court on 8th August 2023.
 14. Section 2 of the Civil Procedure Act defines a legal representative as follows;

“means a person who in law represents the estate of a deceased person, and where a party sues or is sued in a representative character the person on whom the estate devolves on the death of the party so suing or sued”.
 15. The 1st and 3rd Defendants objections are premised on the grounds that the Applicants have not adduced grants of representation for the estates of Elizabeth Wanjiru Matenjwa and Michael N. Njuguna hence they lack the legal capacity to seek substitution. They further contend that the Applicants have not availed the death certificates of the two deceased Plaintiffs.
 16. From the record of the Court, Counsel for the Applicants informed court on the 14th November, 2022 that both Plaintiffs then had passed on. He informed the Court that the 1st Plaintiff had passed on early in the year whereas the 2nd Plaintiff passed on, on 5th August, 2022. Evidently, the suit had not abated at the time the Applicants filed this application.
 17. In the circumstances, I find that the Applicant’s Notice of Motion dated 3rd August, 2023 is merited and I hereby grant the orders sought therein with the result that the Applicants be deemed as properly substituted in place of the deceased Plaintiffs, Elizabeth Wanjiru Matenjwa and Michael N. Njuguna.
 18. The costs of the application shall be in the cause
- It is so ordered.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 24TH DAY OF OCTOBER, 2023

M. D. MWANGI

JUDGE

