



Miyienda (Suing on her behalf and as legal representative/administrator of the Estate of Francis Miyienda (Deceased) v Gusii Coffee Farmers Co-operative Union Limited & another; Miyienda (Applicant) (Environment & Land Case E019 of 2021) [2023] KEELC 21080 (KLR) (24 October 2023) (Ruling)

Neutral citation: [2023] KEELC 21080 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISII
ENVIRONMENT & LAND CASE E019 OF 2021**

**M SILA, J
OCTOBER 24, 2023**

BETWEEN

ESTHER NYABOKE MIYIENDA (SUING ON HER BEHALF AND AS LEGAL REPRESENTATIVE/ADMINISTRATOR OF THE ESTATE OF FRANCIS MIYIENDA (DECEASED) PLAINTIFF

AND

GUSII COFFEE FARMERS CO-OPERATIVE UNION LIMITED 1ST DEFENDANT

MOBAMBA FARMERS CO-OPERATIVE SOCIETY LIMITED 2ND DEFENDANT

AND

OWEN MEKENYE MIYIENDA APPLICANT

RULING

(Application for substitution; plaintiff having filed suit on her own behalf and on behalf of estate of a deceased person; plaintiff now deceased and application made for substitution; applicant only holding a grant ad litem for the personal estate of the deceased plaintiff but none in respect of the estate that the original plaintiff was representing; substitution can only thus be restricted to the personal interest of the plaintiff but not on the claim that was for the benefit of the original deceased person)

1. The application before me is that dated 21 July 2023 filed by Owen Mekenye Miyienda. He seeks an order to substitute the plaintiff who is said to be deceased. In his supporting affidavit, he has deposed that he is son to the plaintiff and that she died on 5 March 2023. He has further deposed that he was issued with a grant of letters of administration ad litem on 20 July 2023 for purposes of proceeding



- with this suit on behalf of the deceased. He has annexed copies of the Certificate of Death and the grant ad litem. The application is not opposed.
2. I have considered the record and the application. I observe that the plaintiff (Esther Nyaboke Miyienda) commenced this suit through a plaint filed on 29 September 2021. She filed suit as the legal representative of the estate of her late husband, one Francis Miyienda, and also on her own behalf. Her case was that the 2nd defendant, in the year 2001, advertised some plots for sale and her late husband purchased three plots which he fully paid for. The plots were identified as Plots A, B, and C. She pleaded that upon the death of her late husband, she filed Kisii CMCC Succession Cause No. 199 of 2014, wherein she obtained a grant which was confirmed and the Plots No. A, B, and C, were awarded to her. She adds that Plot C was registered in her name as Kisii Municipality/Block II/272. She has pleaded that her husband applied for change of user of Plots A and B from agricultural to commercial and he put up a petrol station worth over Kshs. 100 million. In the suit, she sought orders of transfer to her in respect of the Plots A and B; a permanent injunction to restrain the defendants from the plots No. A, B and C; in the alternative payment of general damages and compensation of Kshs. 101 million; and costs.
 3. The plaintiff's pleadings are rather convoluted on whether the suit is in respect of her late husband's estate or for herself. The title of the case shows that she has filed suit on her behalf and as legal representative of the estate of Francis Miyienda (deceased). The prayers in the plaint are not clear as to what is for the estate of the late Francis Miyienda and what prayers were supposed to directly benefit the plaintiff. However, in the plaint, she stated that she was already registered as owner of the land parcel Kisii Municipality/Block II/272 and I assume that on her own behalf, she filed suit over this one parcel of land and on behalf of the other two plots, on behalf of the estate of Francis Miyienda.
 4. The grant ad litem annexed by the applicant is only in respect of the plaintiff, but given that the case of the plaintiff (or at least part of it) was in respect of the estate of Francis Miyienda, a grant which is in respect of the estate of the plaintiff cannot allow him to pursue any claim in respect of the estate of the late Francis Miyienda. I will therefore only allow the application in so far as it is restricted to pursuing the claim that was for Esther Nyaboke Miyienda, but not for any claim for the estate of Francis Miyienda. If there is any intention to seek orders in respect of the estate of Francis Miyienda, that will need a separate grant.
 5. I thus allow this application but only to the above extent, i.e the applicant can only represent the estate of the late Esther Nyaboke Miyienda but not the estate of Francis Miyienda, and can only pursue a claim for the late Esther Nyaboke Miyienda but none in respect of Francis Miyienda. The plaint may be duly amended to reflect that position.
 6. There will be no orders as to the costs of this application.
 7. Orders accordingly.

DATED AND DELIVERED AT KISII THIS 24 DAY OF OCTOBER 2023

JUSTICE MUNYAO SILA

JUDGE, ENVIRONMENT AND LAND COURT

AT KISII

