

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL CASE NO. 531 OF 2005

JANE WAMBUI KARANJA1ST PLAINTIFF

MWANGI MBOGO2ND PLAINTIFF

JAMES KAMAU THUO3RD PLAINTIFF

KAMAU NJUGUNA4TH PLAINTIFF

SAMUEL MUNORU5TH PLAINTIFF

JOSEPH MWANGI MAINA6TH PLAINTIFF

VERSUS

NEW KENYA CO-OPERATIVE CREAMERIS CO LTD...1ST DEFENDANT

MARAGUA COUNTY COUNCIL2ND DEFENDANT

RULING

This is an application by way of Notice of Motion dated 20th April, 2015 under Order 50 Rule 6 and Order 24 Rule 3 (1) and (2) of the Civil Procedure rules to enlarge time and allow the substitution of one Mwangi Mbogo now deceased, with Jane Nyambura Mwangi to facilitate the hearing and determination of the suit.

Upon that enlargement of time, and subject to the order thereunder, the court do allow Jane Nyambura Mwangi to take the place of the said Mwangi Mbogo deceased who was one of the plaintiffs herein. The reasons for seeking those orders are set out on the face of the application and there is also an affidavit sworn by Jane Nyambura Mwangi.

The defendants opposed the application by way of grounds of opposition mainly on the grounds that, the application was filed late and offends the provisions of Order 25 Rule 3 (2) of the Civil Procedure Rules. Counsel have filed submissions which I have read.

The substitution sought is intended, not to prejudice the position of the defendants, but to facilitate the determination of the issues that are central in the whole dispute. Looking at the material presented by the parties, no prejudice has been alleged shall be visited upon the defendants if the order sought is granted. The delay in seeking the substitution has been accounted for, and this court is not inclined to lock out any party.

Accordingly the application is allowed and each party will bear their own costs.

I note that this matter relates to a land dispute and the case should now be transferred to the Environment and Land Court Division for hearing and determination. Orders accordingly.

Dated, signed and delivered at Nairobi this 29th Day of March, 2017.

A. MBOGHOLI MSAGHA

JUDGE