



**Nguru v Karachi & 6 others (Environment & Land Case 30 of 2014)  
[2023] KEELC 22554 (KLR) (19 December 2023) (Ruling)**

Neutral citation: [2023] KEELC 22554 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT EMBU  
ENVIRONMENT & LAND CASE 30 OF 2014  
A KANIARU, J  
DECEMBER 19, 2023**

**BETWEEN**

**NGARI NGURU ..... PLAINTIFF**

**AND**

**JOSEPHAT MACHARIA KARACHI ..... 1<sup>ST</sup> DEFENDANT**

**STEPHEN MUYA CHEGE ..... 2<sup>ND</sup> DEFENDANT**

**SUSAN NYAMBURA MACHARIA ..... 3<sup>RD</sup> DEFENDANT**

**ESTHER MUTHONI MACHARIA ..... 4<sup>TH</sup> DEFENDANT**

**CYRUS KARACHI MACHARIA ..... 5<sup>TH</sup> DEFENDANT**

**HENRY MWANGI NDUNGU ..... 6<sup>TH</sup> DEFENDANT**

**JOSEPH MUIRURI KAMUNDU ..... 7<sup>TH</sup> DEFENDANT**

**RULING**

1. This is a ruling on an objection that was raised by the Defendant's counsel during the hearing of this suit on 17.05.2023. The plaintiff is deceased. He was substituted by Cicily Mwendia Ngari And Njiru Nguru (hereinafter referred to as the 1<sup>st</sup> & 2<sup>nd</sup> Administrators respectively) who are said to be his joint administrators in this suit. The Defendants counsel's objection was on the ground that the 2<sup>nd</sup> administrator Njiru Ngari sat in court while the 1<sup>st</sup> administrator gave her testimony during the hearing of the case and therefore, if the 2<sup>nd</sup> administrator is allowed to testify, his testimony will be prejudicial to their case. The Plaintiff's counsel on the other hand are of the view that the 1<sup>st</sup> and 2<sup>nd</sup> administrators are joint plaintiff's and therefore the 2<sup>nd</sup> administrator was entitled to be present when the case was going on as he is not an ordinary witness but a plaintiff. They say that his testimony will not be prejudicial to the Defendant's case.



2. It was agreed that the said objection be ventilated through written submissions. The Plaintiff's submissions were filed on 22.06.2023 whereas the defendant's submissions were filed on 13.06.2023.
3. The plaintiffs submitted that the 2<sup>nd</sup> administrator being an administrator of the estate of the deceased is a plaintiff in the case and not a mere witness as other witnesses. That he never gave the 1<sup>st</sup> administrator power and authority as a co-administrator in writing to represent, plead, sign and testify on his behalf as the law requires. That the said objection was made in bad faith with the aim of delaying this matter and the same should be dismissed.
4. The defendants on the other hand submitted that the 1<sup>st</sup> administrator having testified, the evidence of the plaintiff has been taken and any other person that the plaintiff would call, would only be an additional witness but not in the representative capacity of the deceased. They submitted further that whether or not a witness should be disqualified is at the discretion of the court. That the guiding principle in this matter is whether the examination of the witness in contention shall occasion injustice. They submit that since the 2<sup>nd</sup> administrator sat in court while the other was testifying and being cross examined, it would occasion prejudice to the defence and cause a miscarriage of justice if he were to be cross examined on matters which the other administrator testified and was cross examined on. That his testimony would be calculated to mend the weaknesses and flaws in the plaintiff's case which occurred during the 1<sup>st</sup> administrator's testimony. It their submission that the scale of justice tilts in favour of the court disallowing the testimony of the contested administrator. To support this position they cited the cases of *Re Estate of Makokha Idris Khasabuli (deceased)* (2019) eKLR and *Saadiya Sheikh Muhiddin & Anor v Nessen Salim Karama & Anor* (2022) eKLR.
5. I have considered the parties oral and written submissions concerning the objection raised by the Defendant's counsel. As has been rightly submitted by the parties, this is a matter where the court has to exercise its discretion in making a determination on whether the said objection has merit or not. The Defendant's argument is that once the 1<sup>st</sup> administrator of the deceased estate testified, then the capacity of the 2<sup>nd</sup> Administrator to testify changed and became that of a witness and not that of a personal administrator. They argue that the 2<sup>nd</sup> Administrator, if allowed to testify, will only serve to mend the weaknesses and flaws of the plaintiff's case which might have occurred when the 1<sup>st</sup> Administrator gave her testimony.
6. I am of a different school of thought. In my view administrators, whether joint or otherwise, typically serve in a representative capacity. They represent the interests of the estate they are administering. When one administrator testifies, it doesn't automatically make the other a mere witness. Both administrators are generally considered administrators of the estate they are administering and their testimony is usually to provide information on behalf of the deceased estate. They are not individual witnesses providing personal accounts. The court acknowledges the objection raised and appreciates the importance of ensuring a fair and impartial process. However, at this stage, I do not see how the said testimony if allowed would be prejudicial to the Defendants. Besides, a look at the witness statements filed by both administrators shows clearly that the content is the same and there is no new issue raised by the 2<sup>nd</sup> administrator that differs from the testimony of the 1<sup>st</sup> administrator. The 2<sup>nd</sup> administrator will be merely repeating what the other testified and in my view that will not be prejudicial to the defendants case. Besides, the defendant will have time to interrogate all the evidence.
7. Ultimately, I hereby proceed to dismiss the objection by the Defendant's Counsel to disqualify Njiru Nguru as an administrator of the deceased estate from testifying. I make no order as to costs.

**RULING DATED, SIGNED AND DELIVERED IN OPEN COURT AT EMBU THIS 19<sup>TH</sup> DAY OF DECEMBER, 2023.**



**A.K. KANIARU**

**JUDGE**

In the presence of Macharia Muraguri for plaintiff;

M/s Chege (absent) for 1st, 3rd, 4th & 5th defendants;

Muriuki Njagagua (absent) for 2nd defendant;

6th and 7th defendants absent and in person.

Court assistant: Leadys

