



REPUBLIC OF KENYA



Kamithi & another (Suing as the administrators of the Estate of Stephen Kamithi Mira (Deceased)) v Mweni & 3 others (Petition 16 of 2022) [2023] KEELC 22396 (KLR) (14 December 2023) (Ruling)

Neutral citation: [2023] KEELC 22396 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
PETITION 16 OF 2022
FM NJOROGE, J
DECEMBER 14, 2023**

BETWEEN

**MARGARET NDUTA KAMITHI 1ST PETITIONER
GEORGE NJENGA KAMITHI 2ND PETITIONER
SUING AS THE ADMINISTRATORS OF THE ESTATE OF STEPHEN KAMITHI
MIRA (DECEASED)**

AND

**KAINGU SHOMBO MWENI 1ST RESPONDENT
CHARLIE CHARTER LIMITED 2ND RESPONDENT
THE LAND REGISTRAR KILIFI 3RD RESPONDENT
THE HON ATTORNEY GENERAL 4TH RESPONDENT**

RULING

1. For determination is the 1st and 2nd Respondent's Notice of Motion dated 29th September 2023 which is seeking the following orders:
 1. That this honourable court be pleased to issue orders to substitute one Ramadhan Shombo as the duly appointed attorney of the 1st Respondent, Kaingu Shombo in place of the latter who has suffered a stroke;
 2. That this honourable court be pleased to grant the 1st Respondent leave to amend his Answer to Petition and Cross Petition to accord the new status and the amendment be automatically effected as per the attached draft without need for a fresh application for amendment;
 3. That the costs of this application be provided for.



2. The application is premised on the grounds set out on its face and the supporting affidavit of Ramadhan Shombo who stated that he is the 1st Respondent's duly appointed attorney by virtue of the Power of Attorney registered on 10th July 2023. He stated the Petition herein was filed on 19th May 2022 and that the 1st Respondent his father, suffered a stroke mid-2020 and is yet to recover and for that reason the application be allowed. On 17th October 2023, the court directed that the Respondents file their replies to the Application and the Application be canvassed by way of written submissions which directions the parties did not comply with. I nevertheless will exercise my discretion to determine the motion on its merits notwithstanding that default.

Disposition

3. The Applicant herein seeks to be substituted as the 1st Respondent in place of one Kaingu Shombo Mweni. The reasons for the said substitution provided are that the said Kaingu Shombo Mweni suffered a stroke sometime in the year 2020 long before the institution of the suit. Even though the Applicant has not provided any evidence to the same, I do note that annexed to the application is a Power of Attorney which donates power to one Ramadhan Shombo generally in relation to the 1st Respondent's interests. As such, I do not see why the substitution sought should not be allowed. Having allowed the substitution, it then follows that the prayer for amendment is justified. The application dated 29/9/2023 is hereby granted in terms of prayer nos 1 and 2 thereof. The costs of the application will be costs in the cause. The amended answer to petition and cross-petition shall be filed within 30 days of this order. The matter shall be mentioned on 15/2/24.

DATED, SIGNED AND DELIVERED AT MALINDI ON THIS 14TH DAY OF DECEMBER 2023.

MWANGI NJOROGE

JUDGE, ELC, MALINDI.

