



REPUBLIC OF KENYA



Richu & 5 others (Suing as officials of Thome V Residents Welfare Association) v Muiyuro & another (Environment & Land Case 8 of 2020) [2023] KEELC 22472 (KLR) (14 December 2023) (Ruling)

Neutral citation: [2023] KEELC 22472 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 8 OF 2020
LN MBUGUA, J
DECEMBER 14, 2023**

BETWEEN

**PAUL RICHU 1ST PLAINTIFF
KIMANI MBUGUA 2ND PLAINTIFF
BEN RUHI KANYI 3RD PLAINTIFF
DAVID NJUGUNA 4TH PLAINTIFF
ARTHUR CHEGE 5TH PLAINTIFF
ALEX MAGEMBE 6TH PLAINTIFF
SUING AS OFFICIALS OF THOME V RESIDENTS WELFARE ASSOCIATION**

AND

**MARY MUIYURO 1ST DEFENDANT
NAIROBI COUNTY 2ND DEFENDANT**

RULING

1. Before me is the Plaintiff's Notice of Motion dated July 25, 2023 seeking leave and extension of time to substitute the 1st defendant with her legal representative, one Eunice Wangui Macharia. The plaintiff contends that although the 1st defendant died on March 17, 2021, they came to learn of her death on February 23, 2023.
2. That recently, the plaintiff has learnt that there is a sole beneficiary to the estate of the 1st defendant by the name Eunice Wangui Macharia, and that their advocates just recently received a copy of the 1st defendant's death certificate.



3. The application is opposed *vide* the repaying affidavit of one Eunice Wangui Macharia sworn on October 24, 2023. She avers that the suit against the 1st Defendant stood abated as of March 17, 2022, and that no grant has been issued to her.
4. I have considered all the arguments raised herein including the rival submissions. It is not disputed that the 1st defendant passed away on March 17, 2021. Thus the suit against her abated on March 18, 2022 by operation of the law.
5. This court has discretion to extend time within which to substitute a party. I pose the question; is there a proper party to be substituted in place of the 1st defendant even if time is extended. I find that the parties who have *locus* to stand in for a deceased person are the personal representatives or appointed legal representatives of such a deceased person in tandem with the provisions of section 54.55 and 82 of the Law of Succession Act. No grant has been availed in this case.
6. In the case of Nephant Kiguta Kingori & 2 others v. Jane Gathoni Kingori & another [2015] eKLR cited in Charles Mugunda Gacheru v Attorney General & another [2015] eKLR the court observed that:-

“... a suit for or against the estate of a deceased person can only be brought by an administrator of the estate or against an administrator of the estate. In the circumstances of this case, it is not clear in what capacity the applicants have brought the suit or the capacity in which the respondents are sued.

Since the capacity in which the applicants have brought the suit or in which the respondents are sued is unknown and there being no evidence that the applicants and/or the respondents are administrators of the estate of the deceased, I find and hold that the suit is incompetent for lack of capacity to sue on the part of the applicants and capacity to be sued on the part of the respondents.”
7. There being no evidence of a grant, then I find that the prayers sought in the application are not merited. Thus the application dated July 25, 2023 is hereby dismissed. Each party is to bear their own costs of the application.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 14TH DAY OF DECEMBER, 2023 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA
JUDGE

