



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KERUGOYA

ELC CASE NO. 59 OF 2012

EMMANUEL KARIUKI GICHACHA.....PLAINTIFF

VERSUS

JAIRUS KARIUKI MBICHO.....DEFENDANT

ELIZABETH WAIRIMU KARIUKI.....APPLICANT

RULING

By her Notice of Motion filed herein on 16th June 2015, the applicant ELIZABETH WAIRIMU KARIUKI seeks the following orders:-

1. *That this Honourable Court be pleased to substitute the defendant herein with ELIZABETH WAIRIMU KARIUKI.*
2. *That costs of this application be in the cause.*

The grounds upon which this application is brought is that the defendant JAIRUS KARIUKI MBICHO died on 17th December 2014 and is survived by the applicant. In her supporting affidavit, the applicant depones that the deceased defendant was her father and she has already obtained a grant of letters of administration Ad litem on 7th April 2015 and she is desirous of proceeding with this suit. A copy of the grant and the defendant's death certificate are annexed to her supporting affidavit.

The application is resisted and in his replying affidavit, the plaintiff EMMANUEL KARIUKI NGACHA has deponed, inter alia, that he has applied for revocation of the grant issued to the applicant and that this application is an attempt to pre-empt the determination of this suit. Most significantly, the respondent has deponed that the applicant obtained a limited grant of letters of administration ad litem only for substitution in ELC Case No. 109 of 2014 a copy of which was annexed to his replying affidavit.

The application was argued before me orally since the respondent is acting in person. Mr. Chomba advocate appeared for the applicant.

I have considered the application, the replying affidavit and the submissions.

The main issue herein is that although the applicant was granted a limited grant ad litem in Kerugoya High Court Succession Cause No. 163 of 2015 "*limited to the purpose of substitution in ELC Case No. 109 of 2014 Kerugoya High Court*", she now wishes to use the same grant to prosecute this claim on behalf of her deceased father. That is what the respondent herein is challenging and I think the issues he has raised are well merited. As indicated on the face of the said limited grant, it was issued solely for the purposes of substitution in ELC Case No. 109 of 2014 Kerugoya High Court. Indeed the word used in the

grant is "**LIMITED**". In **BLACK'S LAW DICTIONARY 9th EDITION**, the term limited executor is defined as follows:-

"An executor whose appointment is restricted in some way such as time, place or subject matter".

It is clear to me therefore that a limited grant can only be used for purposes for which it was issued and no more. And since the grant ad litem issued to the applicant was very specific that it was limited for purposes of substitution in ELC Case No. 109 of 2014 Kerugoya High Court, it can only be used for that purpose and no more. The applicant was at liberty to apply to the High Court for rectification of the limited grant if she wanted it for purposes of this suit as well.

In the circumstance, the applicant's Notice of Motion dated 15th June 2015 and filed herein on 16th June 2015 seeking the substitution of the defendant herein with ELIZABETH WAIRIMU KARIUKI is dismissed. As the parties are siblings, each shall meet their own costs.

It is so ordered.

B.N. OLAO

JUDGE

26TH FEBRUARY, 2016

Further order

On 2nd February 2015, I had ordered, at the request of the applicant's counsel that this ruling would also apply to ELC Case No. 109 of 2014.

It is however now clear that that is not possible in view of what I have found above. That order is vacated. A ruling in ELC Case No. 109 of 2014 will be delivered separately.

B.N. OLAO

JUDGE

26TH FEBRUARY, 2016

Ruling delivered in open Court this 26th day of February, 2016

Ms Thungu for Mr. Chomba for Applicant present

Respondent present in person.

B.N. OLAO

JUDGE

26TH FEBRUARY, 2016