



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC CASE NO. 841 OF 2014

EDWARD KINUTHIA MUCHENE.....1ST PLAINTIFF

PETER MBUGUA MUCHENE.....2ND PLAINTIFF

-VERSUS-

SIMON MACHARIA MUCHENE.....1ST DEFENDANT

MARGARET WAITHIRA MUKIRI.....2ND DEFENDANT

REUBEN KIBUE THIONGO.....3RD DEFENDANT

RULING

1. Before me is a Notice of Motion application dated 3.7.2021 in which the Applicant/Plaintiffs are seeking orders to compel the families of the late Simon Macharia Muchene and late Margaret Waithera Muturi (Particularly Joseph Kangethe Macharia and Geoffrey Muchene Mukiri being sons of the deceased respectively, to furnish death certificates of the deceased to enable the citation and processing of the limited grant.

2. The Applicants are also seeking for extension of time within which the said legal representatives of the deceased persons are to be enjoined in these proceedings and until the relevant death certificates are furnished. The Applicants contend that they are unable to cite the family of the deceased persons as they do not have the death certificates. They further state that they tried to approach the aforementioned children of the deceased persons to take out letters of administration to no avail, and to this end, they sought assistance of the Chief but this was not successful. The Applicants aver that in absence of the Death Certificate, they cannot file for limited grant or cite the family members as required by the **Law of Succession Act**. In a supplementary affidavit dated 25.10.2021, the Applicants contend that they were reliably informed that the death certificates are in possession of Reuben Kibuo Thiongo, the 3rd Defendant.

3. The 3rd Defendant has opposed the application vide his replying affidavit dated 18.10.2021. He contends that 1st Defendant died on 19.6.2020 while 2nd Defendant died on 28.1.2020 hence the Application for enjoining a legal representative of the deceased persons ought to have been made by 18.6.2021 and 27.1.2021 respectively.

4. I did not see any submissions filed by Applicants. However, those of the 3rd Defendant are dated 26.11.2021. He denies being in possession of the respective death certificates. He avers that the Applicants did not comply with the provisions of **Order 24 rule 4(3)** of the **Civil Procedure Rules** hence there are no plausible reasons for revival of the suit.

Determination

5. I will start by pointing out that although the application has been brought under **Order 24 rule 3** of the **Civil Procedure Rules**, the prayers sought in the application are not in tandem with that rule. The gist of the application is that the Applicants want assistance of this court to get the death certificate of 1st and 2nd Defendants to facilitate the filing of a citation in order to acquire the limited grant; and they also seek extension of time until such documents are availed. Thus contrary to the averment made by the 3rd Defendant, this application is not about enjoining the legal representatives of 1st and 2nd Defendants as such legal representatives do not exist.

6. As regards the prayers sought by the Applicants, it is the finding of this court that the issues raised therein are in the ambit of the probate court as provided under **Sections 51, 53 and 54** of the **Law of succession Act**. Also see **Rule 14** of the probate and administration rules.

7. Jurisdiction is everything and this court has no jurisdiction to deal with matters relating to filing of a citation or the grant. The application dated 3.7.2021 is hereby dismissed. Each party to bear their own costs of the application.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 27TH DAY OF JANUARY, 2022 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

In the presence of:-

Mugikoyo for the Plaintiff/Applicant

Muturi for 3rd Respondent

Court Assistant: Eddel Barasa