



REPUBLIC OF KENYA



**Rutto v Kugu (Environment & Land Case 123 of 2012)  
[2025] KEELC 206 (KLR) (29 January 2025) (Ruling)**

Neutral citation: [2025] KEELC 206 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KITALE  
ENVIRONMENT & LAND CASE 123 OF 2012**

**CK NZILI, J  
JANUARY 29, 2025**

**BETWEEN**

**SILAH KIPRUGUT ARAP RUTTO ..... PLAINTIFF**

**AND**

**ELIUD KIPROTICH ARAP KUGU ..... DEFENDANT**

**RULING**

1. The decree-holder asks the court, through an application dated 22/11/2024, to order that the decree of this court dated 13/3/2013 be executed against Esther Keter, the widow of the defendant, the late Eliud Kiprotich Arap Kugu. The grounds are set out on the face of the application and in a supporting affidavit of Rebecca Jepkemei Rutto sworn on the even date.
2. Briefly, the applicant, who is a legal representative of the estate of her late husband, who died on 4/8/2015, and was substituted as the decree-holder on 28/2/2017, and the widow obtained a Grant ad Litem for the estate of the judgment debtor on 31/7/2023. She attached copies of the decree, Ad Litem Letters of Grant to her, those issued to the judgment debtor, and a death certificate as “RJK 1-4,” respectively.
3. The applicant avers that the judgment debtor and her children are still occupying the one acre of land, which forms part of her late husband’s parcel No. Moi’s Bridge Block 12/Excullen/244. The applicant avers that once the correct boundary gets established as per the court decree, Esther Keter is the one who should surrender the one acre to her as per her affidavit sworn on 12/8/2024, where she has made admission of occupying the land together with her family, as per annexed “RJK5”.The applicant states that although the County Surveyor had visited the locus in quo twice, execution of the decree has not taken place.



4. The applicant relies on a written submission dated 3/12/2024 that under Section 37(1) of the [Civil Procedure Act](#), the court has powers to allow the reliefs sought. Reliance is placed on [Bakari Ibrahim -vs- Issa Ibrahim](#) Kisumu Court of Appeal No. 55 of 2014.
5. The application is opposed through a replying affidavit by Esther Keter sworn on 7/12/2024. It is deponed that the deceased initial decree holder intentionally failed to execute the decree until he passed in 2017. Further, it is averred that an application dated 6/8/2023 to substitute the deceased was dismissed on the grounds that she was reviving the suit and that her Limited Grant ad Litem issued on 31/7/2023 expired after six months on 31/1/2024 hence, she has no authority to act for her deceased husband's estate, and therefore it was irregular to drag her to the suit.
6. The respondent avers that she is neither an Administratrix nor a legal representative of the estate of the former judgment debtor for Section 37 of the [Civil Procedure Act](#) to apply. The respondent denies occupying or intermeddling with the suit land in the absence of any evidence by the applicant. The respondent avers that intermeddling with the estate of the deceased falls under a family division and not this court. The respondent termed the application as baseless, lacking merits, malicious, and a waste of the court's time.
7. Section 37(1) of the [C.P.A](#) provides that after a judgment debtor dies before the decree has been fully satisfied, the holder of the decree may apply to the court that passed the decree to execute the same against the legal representative of such deceased, or against any person who has intermeddled with the estate of such deceased.
8. In [Agnes Wanjiku Wang'ondur -vs.- Uchumi Supermarket Ltd](#) [2008] eKLR, the court held that the requirement for substitution does not apply to proceedings at the execution of an order.
9. In [V. Utthi Rapathi vs.- Ashrab Ali & Others](#) [1998] AIR 1998, SC 1168, the Supreme Court of India held that though the legal representative before the decree is passed the legal representatives must be brought on board, the same was not applicable in cases of death of the decree-holder or the judgment debtor during execution proceedings.
10. Regarding the execution of a decree where the judgment creditor has passed on, in [Mueni Kiamba -vs.- Mbiti Kimeu Kimolo](#) [2017] eKLR, an objection had been raised at the execution stage that the deceased plaintiff had not been substituted. The court, while relying on Order 24 Rule 10 [CPR](#), held that parties at the execution stage should be allowed to execute without the need to substitute deceased parties and that it is not mandatory to order for substitution of a decree-holder unless the decree has become stale under Section 4(A) of the [Limitation of Actions Act](#), after 12 years without execution as held in [M'ikiaru M'Rinkanga & Another -vs.- Gilbert Kabeere M'Mbijiwe](#) [2007] eKLR.
11. In this matter, the respondent urges the court to find that she is neither a legal representative nor an intermeddler of the estate of the deceased, for her to be joined as a party or for execution to be sought to be executed against her, for there is no evidence that she is in occupation of the suit land as alleged or at all.
12. The respondent does not dispute that she sought and obtained a Limited Grant ad Litem for the estate of her deceased husband dated 31/7/2023 in Kitale Chief Magistrates Court No. 67 of 2023.
13. She equally does not dispute swearing the affidavit dated 12/8/2024, where she was seeking to join the suit as an interested party, being a spouse to the deceased, likely to be affected by the decree. In paragraph 7 thereof the respondent had averred that she risked eviction from the suitland. In my considered view the respondent is estopped from denying facts which she had admitted to in an earlier affidavit.



14. In *Rose Gacheri -vs.- Jane Nkirote* [2021] eKLR, the court took up a view that Order 24 Rules 3, 4,7, and 10 of the *CPR* do not apply to a suit at the execution stage, unless the execution is being made after 12 years. The court observed that under Order 31 Rule 1 *CPR*, it is not mandatory to make a legal administrator a party for execution to issue against the property vested in him. The court said that given the overriding objective under Article 159 of the *Constitution*, parties should be allowed to proceed with execution without the need for substitution of the deceased parties.
15. Considering the above caselaw, I find that the application merited. It is allowed with costs.
16. Orders accordingly.

**RULING DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT KITALE ON THIS 29<sup>TH</sup> DAY OF JANUARY 2025.**

**HON. C.K. NZILI**

**JUDGE, ELC KITALE.**

**In the presence of:**

Mr. Kiarie for the Applicant/Plaintiff

Lichuma for Mafumbo for the Interested Party present

