

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MOMBASA

ELC NO. 228 OF 2007

ALI MWANZIA.....PLAINTIFF

VERSUS

SHADRACK NGALUMA.....DEFENDANT

RULING

(Application for substitution of the deceased defendant; cause of action

surviving his death; application filed within one year of death; application allowed)

1. What is before me is an application dated 9 July 2021 filed by one Shadrack Ngaluma. He seeks orders to be added to this suit, but from what I can decipher, this is really an application for substitution of the deceased defendant. The applicant avers that the defendant died on 25 July 2021 while this suit was still pending and he has annexed a copy of the Certificate of Death. He has also annexed a limited grant ad litem issued to him in respect of the estate of the deceased. The grant was issued on 30 June 2021.
2. The cause of action as pleaded in the plaint is that the deceased defendant illegally got himself registered as proprietor of the land parcel Kimorigho/Mboghoni/469 which the plaintiff contends ought to be registered in his (plaintiff's) name. That cause of action survives the death of the deceased defendant and can thus be continued by the legal representative of his estate.
3. The plaintiff did not oppose the application and had indeed filed an application of his own, dated 30 July 2021, seeking to extend the time for substitution. That application is clearly overtaken by events.
4. I have no reason not to allow the application which was filed within one year of the death of the defendant as required by Order 24 Rule 4 of the Civil Procedure Rules, 2010. I therefore allow the application. I direct that the deceased defendant be substituted by the applicant. The plaint may accordingly be amended to reflect this position. The amended plaint be filed and served within the next 14 days. There will be no orders as to costs on this application and the plaintiff's application dated 30 July 2021.
5. Orders accordingly.

DATED AND DELIVERED THIS 13TH DAY OF JANUARY 2022

JUSTICE MUNYAO SILA

JUDGE, ENVIRONMENT AND LAND COURT

AT MOMBASA