

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC CASE NO. E381 OF 2021

JOSEPH NYAMUMBO OBIRI.....PLAINTIFF

VERSUS

EBADO ELMI.....DEFENDANT

INTERIM RULING

1. This court was to determination a Notice of Motion application dated 10th November 2021 filed by the plaintiff who is seeking injunctive orders against the defendant in respect of a parcel of land, Reference Number 36/II/98, Eastleigh, Nairobi.
2. A certain Respondent identified as Mohamed Ali Ibrahim has filed a replying affidavit, grounds of opposition as well as a Preliminary objection dated 8.12.2021 where he avers that the defendant died on **10th Day of October 1990**, hence the suit cannot be sustained. The court was also to determine the preliminary objection too.
3. The Respondent, Mohamed Ibrahim who is apparently a relative of the Defendant states that he has applied for letters of administration in respect of the estate of the deceased Defendant.
4. I find that matters of death are grave and ought to be handled as such. The Respondent has availed a document indicating that he has filed a succession **Cause No. E042 OF 2021** before the Kadhi's court in Nairobi. This is however not a grant of letters of administration. On the other hand, the Plaintiff avers that the suit land is in the name of the Defendant, and so are the documents of approvals of the development. The court cannot determine the status of the Defendant based on the aforementioned material availed to this court. Similarly, the court cannot proceed further without ascertaining the issue as to whether Defendant is a deceased person.
5. In that regard, I direct that the person presenting himself as the Respondent, **Mohamed Ali Ibrahim** to avail the death certificate of the deceased forth with.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 24TH DAY OF FEBRUARY, 2022 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

In the presence of:-

Mutunga holding brief for Nyamweya for Plaintiff/Plaintiff

Nyanyuki holding brief for Itemere for the Defendant

Court Assistant: Eddel Barasa