



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT NAIROBI**

**ELC CASE NO. 67 OF 2020**

**ODUOR HAWI AMBALA.....1<sup>ST</sup> PLAINTIFF/RESPONDENT**

**ODHIAMBO TAABU AMBALA.....2<sup>ND</sup> PLAINTIFF/RESPONDENT**

**OGOLA KODHEK AMBALA.....3<sup>RD</sup> PLAINTIFF/RESPONDENT**

**VERSUS**

**HADIJA ASIF BUTT.....1<sup>ST</sup> DEFENDANT/APPLICANT**

**FAROOK ASIF BUTT.....2<sup>ND</sup> DEFENDANT/APPLICANT**

**RULING**

*(On the request for directions on the way forward in regard to the pending Application by the Plaintiffs following the death of the 1<sup>st</sup> Plaintiff)*

1. The three (3) Plaintiffs, Oduor Hawi Ambala, Odhiambo Taabu Ambala and Ogola Kodhek Ambala, jointly filed this suit by way of Plaint dated 11<sup>th</sup> May 2020. At paragraph 3 of the Plaint, the Plaintiffs state that they are the legitimate registered owners of L.R No.1160/911, 1160/910, 1160/912, 1160/947, 1160/948 & 1160/949, all in Karen, Nairobi having inherited the same from their late father's estate.
2. The Plaintiffs swore the verifying affidavit accompanying the Plaint jointly.
3. Alongside the Plaint, was a Notice of Motion Application filed under certificate of urgency dated 11<sup>th</sup> May 2020 seeking orders of temporary injunction to restrain the Defendants from interfering with the subject parcels of land. The Application was supported by an affidavit once again jointly sworn by the Plaintiffs on 11<sup>th</sup> May 2020. At paragraph 3 of the supporting affidavit the Plaintiffs disclosed their ownership of the 6 plots as follows: -
  - i. Oduor Ambala (1<sup>st</sup> Plaintiff) – owns L.R No. 1160/910 & 1160/912***
  - ii. Odhiambo Taabu Ambala (2<sup>nd</sup> Plaintiff) – owns L.R No.1160/911***
  - iii. Ogola Kodhek Ambala (3<sup>rd</sup> Plaintiff) – owns L.R No. 1160/947, 1160/948 & 1160/949.***
4. From my reading of the Plaint, each plaintiff has a distinct claim against the Defendants. I make reference to the Application filed by the Plaintiffs for the sole purpose of identifying their respective claims.
5. On 27<sup>th</sup> January 2022, when the Advocates representing the parties in this matter appeared before me, they both confirmed that the 1<sup>st</sup> Plaintiff, one Oduor Hawi Ambala is deceased. The Plaintiffs' Advocate, Mr. Ng'ang'a, actually clarified that the 1<sup>st</sup> Plaintiff passed on, on 28<sup>th</sup> March 2021.
6. The 1<sup>st</sup> Plaintiff is yet to be substituted. The Advocate for the Plaintiffs confirmed that the issue of the Administration of his estate is on-going, still pending before court.

7. Advocate Ng'ang'a informed the court that there is an application dated 1<sup>st</sup> December 2020 pending determination in this case. The Application was filed by the Defendants under certificate of urgency seeking amongst other orders review, variation and or setting aside of the mandatory ex-parte injunctive orders made on 24<sup>th</sup> November 2020.

8. While that application dated 1<sup>st</sup> December 2020 was still pending, the record shows that the Plaintiffs filed a Notice of Motion Application dated 9<sup>th</sup> April 2021 seeking that the Judge who had the conduct of the matter then, Lady Justice Komingoi recuses and disqualifies herself. A ruling in respect of the said application was delivered on 25<sup>th</sup> November 2021. The file is now before me. It was re-allocated to me by the presiding Judge of the Environment and Land Court, on 14<sup>th</sup> December 2021.

9. The Advocates confirmed that they had both filed submissions in respect of the Application of 1<sup>st</sup> December 2020. The Plaintiffs' Advocate sought a ruling date. The Defendants' Advocate on the other hand sought court's directions in view of the death of the 1<sup>st</sup> Plaintiff.

10. I have taken time to understand and familiarize myself with the proceedings and the pleadings in this case.

11. As I have already pointed out, the Plaintiffs jointly filed this suit. Upon the death of the 1<sup>st</sup> Plaintiff therefore, who I have demonstrated had a distinct claim of his own over L.R No.1160/910 and 1160/912, any further proceedings must be stayed until the deceased is substituted in accordance with the law. Otherwise, who will represent the interests of the deceased Plaintiff?

12. Under section 82 of the Law of Succession Act, only a legal representative appointed in accordance with that law can represent the estate of a deceased person.

13. Accordingly, this court will stay any further proceedings including, delivering a ruling on the pending Application until the substitution of the 1<sup>st</sup> Plaintiff or the abatement of the 1<sup>st</sup> Plaintiff's case.

14. The other issue that has been raised by the Plaintiffs' Advocate severally from the record before me is whether the Defendants' Advocate is properly on record. I have perused the physical file and as well as the e-filing portal. I have not come across either a Notice of Appointment of Advocate or a Notice of Entry of Appearance on behalf of the Defendants by Ogado & Company Advocates. In the absence of such a notice, the law firm of Ogado & company Advocates is not properly on record for the Defendants.

15. I honestly do not understand why that should be an issue. If the law firm is not properly on record for the Defendants, they should regularize that forthwith.

16. I want to remind Advocates and the parties in this case without any fear of contradiction that they have an obligation to help the court realize the overriding objective. The court is prepared to burn the midnight oil to have this case expeditiously concluded. I urge the Advocates and the parties to help the court in realizing that aspiration.

17. I will state, as I have stated elsewhere, that this court has no other business or interest but to do justice every time, all the time.

It is so ordered.

**Dated, Signed and Delivered at Nairobi this 16<sup>th</sup> day of February 2022.**

**M.D. MWANGI**

**JUDGE**

In the Virtual Presence of:-

Mr. Ng'ang'a for the Plaintiffs

Mr. Ogado for the Defendants

Court Assistant: Hilda

**M.D. MWANGI**

**JUDGE**