



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MERU

ELC CASE NO. 12 OF 2010

THOMAS MUNGIIRA.....1ST PLAINTIFF
THOMAS MUGIIRA LICHORO (Suing as personal representative of JACOB MITHEU) 2ND PLAINTIFF
JOSHUA MWANGI KAMAU (Suing as personal representative of KAMAU GITHONGI) 3RD PLAINTIFF
JACOB KALERIA M'AMURU (Suing as representative of STEPEHN M'AMURU).....4TH PLAINTIFF
JONANINA IMPWI (Suing as representative of JOHN THIKANYI)..... .5TH PLAINTIFF
JAPHET MARANGU6TH PLAINTIFF
SAMUEL LIBURU 7TH PLAINTIFF
CHEBERE ARUAKI 8TH PLAINTIFF
KIRAGU KAMUIRU 9TH PLAINTIFF
MWANGI MARATHI 10TH PLAINTIFF
JULIUS GIKONYO GACHUHI (Suing as personal representative of GACHUHI KAMWANGI...11TH PLAINTIFF

VERSUS

JOSEPH MUTUMA1ST DEFENDANT
THE DISTRICT LAND ADJUDICATION OFFICER.....2ND DEFENDANT
THE HON. ATTORNEY GENERAL3RD DEFENDANT
BEARNARD MUTHOMI MEMEINTERESTED PARTY
MARY PHILOMENA MARANGU.....APPLICANT

RULING

1. The court is asked to allow Mary Philomena Marangu a legal representative of the 6th plaintiff now deceased to join the suit. The application is based on a supporting affidavit of the proposed plaintiff sworn on 17.12.2021 stating the 6th plaintiff died on 21.6.2000 as per the attached death certificate and confirmation of grant issued on 19.7.2004.
2. The application is opposed by the defendants through a replying affidavit sworn by the 1st defendant on 23.12.2021 on the basis that the plaintiffs failed to disclose material facts at the time they filed the suit since all the facts alluded to in the two annexures occurred long before the suit was filed hence the suit was incurably defective, non-starter and cannot be regularized.

3. **Order 24 Rule 2 of the Civil Procedure Rules** relates to case where a plaintiff dies during a subsisting suit and a cause of action survives or continues to the surviving plaintiff alone with the application being made within a year after the death, failure of which the suit abates. In this case, the 6th plaintiff is alleged to have died almost a year before the suit was filed.

4. In the plaint dated 3.2.2010 at paragraph 6, he is described as an adult of sound mind residing in Tigania District and at paragraphs 15 and 16, as the owner of **Parcel No. 1787**.

5. In the verifying affidavit, the 1st plaintiff swore that the 6th plaintiff had authorized him to swear to the facts. Similarly, the consent to sue dated 22.12.2009 was issued to him alongside the other plaintiffs.

6. Additionally, the authority and consent under **Order 1 Rule 12 of the Civil Procedure Rules** attached to the plaint and filed on 4.2.2010 is allegedly executed by the 6th plaintiff.

7. Based on the admission by the plaintiffs that the 6th plaintiff passed on in 2000, long before the suit was filed and the cause of action was based on fraud allegedly committed in 2009, the said cause of action expired after 12 years and cannot be said to subsist.

8. Secondly, the plaintiff was dead before the suit was filed and served upon the defendants. The court was made to accept false documents by the plaintiff. How the anomaly occurred and was not detected by the rest of the plaintiffs remains a mystery and no explanations at all has been made by the applicant herein.

9. This court is being asked to cure an already defective suit. Several other plaintiffs have also died in the course of this suit and amendments allowed yet it is not clear why the 6th plaintiff remained in the pleadings when it was a fundamental error to have included him in the suit in the first instance.

10. In the premises, I find the application lacking merits. The same is dismissed with costs.

DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS

THIS 30TH DAY OF MARCH, 2022

IN PRESENCE OF:

WAMBUA FOR PLAINTIFFS 1ST DEFENDANT

KIETI FOR 2ND AND 3RD RESPONDENT

HON. C.K. NZILI

ELC JUDGE