



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MERU

ORIGINATING SUMMONS NO. 50 OF 2008

M.MUTHAURA M'MIKUA..... PLAINTIFF

VERSUS

EUSTACE MUCHIRI 1ST DEFENDANT

NAHASON MWAI GATERE 2ND DEFENDANT

AND

NAFTALY GUANTAI MUTHAURA APPLICANT

RULING

1. Through an application dated 11.3.2022, Naftaly Guantai Muthaura the applicant herein seeks to be enjoined as a party in place of the plaintiff who passed on 20.5.2020, following an appointment as a legal representative on 13.8.2021 in **Meru CM Miscellaneous Succession No. E083 of 2021**.

2. Upon joinder as a party, he also seeks leave to respond to the application dated 20.1.2022 which he says was never served upon them whereas there is a pending **Nyeri Civil Appeal No. 164 of 2017**. The application is supported by his affidavit sworn on the even date attaching the limited grant of letters of administration ad litem and a copy of the death certificate.

3. There is no dispute that the plaintiff passed on after the judgment on 28.9.2017. The decree holder filed the application dated 20.1.2022 seeking to execute the decree dated 16.10.2017 against the plaintiff who is now deceased. The applicant did not disclose these material facts at the time the application was filed.

4. **Order 24 Rule 4 (1)** of the Civil Procedure Rules mandates the court, once moved, to allow a legal representative to be joined as a party in any proceedings.

5. In ***Tang Gas Distributors Ltd –vs- Said & Others [2014] E.A 448***, it was held a court had powers to add a party at any stage of the proceedings.

6. In ***Robert Githua Thuku –vs- William Ole Nabala & 9 Others [2018] eKLR***, the Court of Appeal held a party seeking to join proceedings must demonstrate an interest in the matter whereas under **Section 82 of the Law of Succession Act 160** state a personal representative has powers to enforce or otherwise defend in all causes of action by virtue of any law, surviving the deceased.

7. In my view, the applicant has demonstrated he is a legal representative of the deceased persons. Even though the suit is finalized, there is a pending execution application as well as an appeal. I find him fitting the description under **Section 2 of the Civil Procedure Act** and **Section 45 of the Laws of Succession Act as read together with Order 24 Rule 5 Civil Procedure Rules**.

8. In the premises, I allow the application with no order as to costs.

9. The legal representative to file and serve a replying affidavit to the pending application within 15 days from the date hereof.

10. The court declines to grant prayer No's 3 and 4 given the orders above. Parties are at liberty to put in written submissions within 30 days from the date hereof.

11. Ruling for application dated 20.1.2022 shall remain as scheduled earlier on.

DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT MERU

THIS 23RD DAY OF MARCH, 2022

In presence of:

Kieti for Nyamu for applicant

Kimathi Kiara – absent

Court Assistant – Kananu

HON. C.K. NZILI

ELC JUDGE