



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NYERI

ELC NO. 211 OF 2014

MWANGI WAWERU PLAINTIFF

AND

HENRY WAWERU MWANGI.....APPLICANT/LEGAL REPRESENTATIVE

-VERSUS-

ESTHER KAGURE.....DEFENDANT

RULING

1. By the Notice of Motion dated 9th July 2021 Henry Waweru Mwangi (*the Applicant*) describing himself as the Plaintiff/Applicant prays for orders as follows:

1. *Spent.*

2. *That this Honourable court do grant Charles Wanyeki Wairagu trading as Hippo Auctioneers, orders to carry out eviction against the Defendant/Respondent Esther Kagure from the land Parcel L.R. Thegenge/Karia/803 as per (the) decree of this Court dated 19th December, 2018.*

3. *That the Officer Commanding Police Station at Ruringu Police Station be ordered to provide security during the eviction process.*

2. The said application is based on the grounds:

(i) *That this Court gave the Defendant 90 days to vacate the suit land effective 19th December, 2018 when the Judgment was delivered; and*

(ii) *That the said 90 days elapsed on 19th March, 2019 but the Defendant has failed to vacate the property even after her stay of execution application was dismissed.*

3. In response to the said application, Esther Kagure (*the Defendant*) has by a Notice of Preliminary Objection dated 4th October, 2021 objected to the application on the grounds that:

1. *The Applicant Henry Waweru Mwangi is not a party to the instant suit and thus lacks locus standi to bring and/or prosecute the aforesaid application;*

2. *The Plaintiff in the suit Mwangi Waweru has been dead since 18th June, 2019 and the Plaintiff's suit has since abated by virtue of Order 24 Rule 3 Sub-rule 3 of the Civil Procedure Rules; and*

3. *No one, including the Applicant in the instant application, has been substituted in place of the deceased Plaintiff.*

4. In response to the application and by his statement in response dated and filed herein on 6th December, 2021, the Applicant avers that he is the duly appointed legal representative of the estate of the late Mwangi Waweru having been issued with Letters of Administration intestate for the said estate on 6th March, 2020.

5. I have considered both the application and the Preliminary Objection raised thereto. I have similarly considered the submissions filed in support of the Preliminary Objection by the Learned Advocates for the Defendant. I was unable to find any submissions filed by the Applicant who is acting in person.

6. By his application dated 9th July, 2021, the Applicant prays for an order of eviction against the Defendant from all that parcel of land known as Thegenge/Karia/803. It is the Applicant's case that this Court had by its Judgment rendered on 19th December, 2018 granted the Defendant 90 days to vacate the land and that despite the lapse of the said period, the Defendant had refused to vacate the suit property.

7. The Defendant as I understand her, does not refute the fact that Judgment was delivered as aforesaid against herself on the said date. It is however her case that the Applicant is not the Plaintiff in whose favour the Judgment was delivered and thus the Applicant lacks the *locus standi* to evict her from the suit property.

8. The main basis for the Defendant's Preliminary Objection dated 4th October, 2021 is **Order 24 Rule 3 of the Civil Procedure Rules**. That Rule provides as follows:

“(1) Where one of two or more Plaintiffs dies and the cause of action does not survive or continue to the surviving Plaintiff or Plaintiffs alone, or a sole Plaintiff or sole surviving Plaintiff dies and the cause of action survives or continues, the Court, on an application made in that behalf, shall cause the Legal Representative of the deceased Plaintiff to be made a party and shall proceed with the suit.

(2) Where within one year no application is made under sub-rule (1), the suit shall abate so far as the deceased Plaintiff is concerned, and, on the application of the Defendant, the Court may award to him the costs which he may have incurred in defending the suit to be recovered from the estate of the deceased Plaintiff:

Provided the Court may, for good reason on application, extend the time.”

9. As it were, it is not disputed that the Plaintiff herein, one Mwangi Waweru passed away on 18th June, 2019. By the time the Applicant instituted the present application before me for consideration, some two years had lapsed and the Defendant was thus entitled to treat the suit as having abated.

10. While the Applicant and one Peter Maina Mwangi were apparently issued with Letters of Administration intestate on 6th March 2020, no application was made to this court as envisaged under **Order 24 Rule 3(1) of the Civil Procedure Rules** as cited hereinabove for the Legal Representatives to be made a party to the suit within one year or at all.

11. That being the case, it follows that the Applicant is essentially a stranger in these proceedings and is not clothed with the *locus standi* as at now to be granted any orders in these proceedings.

12. The upshot is that I find merit in the Defendant's Preliminary Objection. The Notice of Motion dated 9th July, 2021 is accordingly struck out with costs to the Defendant.

Ruling dated, signed and delivered in open court at Nyeri this 10th day of March, 2022.

In the presence of:

Mr. Henry Waweru – Applicant in person

Ms Ndegwa for the Defendant

Court assistant - Kendi

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J. O. Olola

JUDGE