



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT EMBU

MISC. CIVIL APPLICATION NO. 49 OF 2010

IN THE MATTER OF AN APPLICATION TO APPLY FOR AN ORDER OF CERTIORARI

AND

**IN THE MATTER OF DECISION BY THE CHAIRMAN GICHUGU EAST DISTRICT LAND
DISPUTE TRIBUNAL NO. 37. OF 2009 AWARD NO. 1 OF 2010**

AND

IN THE MATTER OF JUDICIAL REVIEW

AND IN THE MATTER OF THE REPUBLIC

THE CHAIRMAN

GICHUGU EAST DLT.....1ST RESPONDENT

SRM GICHUGU.....2ND RESPONDENT

GRACE KATHUNGU NJERU.....3RD RESPONDENT

EX PARTE

JAMES NJERU MBUNGU.....APPLICANT(DECEASED)

AND

ELIZABETH WAWIRA NJAGI.....APPLICANT

R U L I N G

This is an application for substitution of a party dated 19/5/2014 brought by way of notice of motion. The applicant Elizabeth Wawira Njagi applies to be substituted in this matter with the deceased James Njeru Njagi Mbungu who is the Exparte Applicant herein.

She was represented by Rose W. Njeru & Co. Advocates. The Application is supported by the affidavit of the applicant.

Ms. Njeru argued that the Exparte applicant sought to quash orders of the Land Disputes Tribunal in this matter. He is now deceased before the matter was disposed of. The applicant is one of the administrators in the estate of her deceased husband in Kerugoya Succession Cause No. 72 of 2012. The land parcels

which are subject of this matter cannot be distributed in the succession cause until this matter is disposed of. The applicant therefore wishes to step in the shoes of her deceased husband in order to prosecute the suit.

The respondent filed a replying affidavit in which she states that she is the deceased's eldest widow and for that reason she is the right person to be substituted in this matter. She confirms that there is a succession cause pending in Kerugoya High Court in respect of her deceased husband where the applicant and respondent's two daughters are the joint administrators.

I have carefully considered the arguments of both parties in this application. Both parties admit that this matter is still pending where their husband was the exparte applicant. The matter requires to be disposed of in order to give way for the pending succession cause in Kerugoya. The fear of the respondent is that her co-widow may have advantage in way of inheritance over her if she is allowed to substitute the deceased.

This court appreciates the fact that the two ladies have already filed the succession cause and the the interests of each house is protected by the administrators who are draw from each of the two houses of the deceased. The respondent need not worry about her interests in inheritance. This matter which has been pending the year 2010 has nothing to do with distribution of deceased's property. The distribution will be done in the Kerugoya succession cause.

The applicant has given sound reasons for applying to be substituted in place of her husband in this matter. Being one of the administrators in the succession cause, she has the legal capacity to take over this matter. I find the opposition by the respondent without any legal or factual basis.

I therefore allow the application as prayed.

DELIVERED, DATED AND SIGNED AT EMBU THIS 11TH DAY OF DECEMBER, 2014.

F. MUCHEMI

JUDGE

In the presence of:-

Mr. Momanyi for Mr. Kagio for Respondent

Applicant

F. MUCHEMI

JUDGE