



REPUBLIC OF KENYA



KENYA LAW
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**Gachuru v Hunja; Hunja & another (Applicant) (Environment & Land
Case 272 of 2015) [2022] KEELC 2972 (KLR) (26 May 2022) (Ruling)**

Neutral citation: [2022] KEELC 2972 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYERI
ENVIRONMENT & LAND CASE 272 OF 2015**

**JO OLOLA, J
MAY 26, 2022**

BETWEEN

MICHAEL NDIRITU GACHURU PLAINTIFF

AND

ISAAC J HUNJA DEFENDANT

AND

JANE NJERI HUNJA APPLICANT

DANIEL NDEGWA HUNJA APPLICANT

RULING

1. By the Notice of Motion dated 3rd July 2019, Jane Njeri Hunja and Daniel Ndegwa Hunja (the Applicants) pray for orders:
 1. That the Court be pleased to join the Applicants as Interested Parties in this suit;
 2. That upon the Applicants being enjoined the Court do set aside the interlocutory Judgment entered on the 23rd March 2016, the proceedings of 12th March, 2019 and the proceedings of the 11th March, 2016;
 3. That the Plaintiff do serve the Applicants with requisite pleadings;
 4. That costs be provided for.
2. The application which is supported by an affidavit sworn by the 1st Applicant Jane Njeri Hunja is based on the grounds:
 - (i) That the suit was filed when the Defendant was deceased;



- (ii) That adverse orders have been made against the Defendant on false allegations that service had been effected; and
- (iii) That the Applicants are the administrators of the Defendant's estate.
3. Michael Ndiritu Gachuru (the Plaintiff) is opposed to the application. In his Replying Affidavit sworn and filed herein on 9th July 2019, the Plaintiff avers that as at the time he filed the suit, he was not aware that the Defendant was deceased and he had no reason to believe so.
 4. The Plaintiff further avers that he knew a few details about the Defendant and that he gave the details to the Process Server after he filed the suit herein. The said Process Server having made efforts to trace the Defendant filed an affidavit indicating he was unable to trace the Defendant.
 5. The Plaintiff asserts that he has only learnt about the death of the Defendant from the Applicant's application and urges the Court to dismiss the said application with costs.
 6. I have carefully perused and considered the application and the response thereto. I have similarly perused the Applicants submissions as filed herein by Mr. Kiminda, Learned Advocate for the Applicants. I was unable to find any submissions filed by the Plaintiff/Respondent.
 7. The two Applicants herein seek to be enjoined in this suit as Interested Parties. They also urge the Court to set aside the interlocutory Judgment and the subsequent proceedings herein. The Applicants are the Administrators of the estate of Isaac J. Hunja. The said Isaac J. Hunja has been sued as the Defendant herein and it is the Applicants' case that as at the time this suit was instituted on 11th November 2015, the said Defendant was not in existence as he had died two years earlier on 14th October, 2013.
 8. The Plaintiff does not deny the fact that the Defendant had passed away two years before he filed the suit. His grouse with the application is the contention by the Applicants that he knew the Defendants home and that he ought to have known where to serve the Defendant and more so the fact that he was dead.
 9. The Plaintiff asserts that he did all he could through a process server to trace the Defendant in vain and that he only learnt of his death when he was served with this application.
 10. From a perusal of the record herein, it is apparent that the suit was instituted on the said 11th day of November, 2015 and that on 23rd March, 2016 an interlocutory Judgment was issued against the Defendant with directions that the matter proceeds by way of formal proof. Subsequently on 12th March 2019, the Plaintiff gave his testimony before the Honourable Lady Justice Lucy Waithaka. The case was thereafter closed with directions that the Plaintiff files written submissions after which a Judgment date was to be taken.
 11. It is those proceedings which by this present application the Applicants urge the Court to set aside and that they hence be enjoined in the suit by virtue of their being the Administrators of the estate of the Defendant.
 12. It is surprising that instead of taking steps to regularize his suit having discovered that the Defendant was long dead when he filed the suit against him, the Plaintiff chose to oppose the application. It is not denied that the Defendant was not alive when the suit was filed against him.
 13. Given that the Defendant was not in existence when the suit was filed, any action taken herein including the filing of the Plaint, the extraction of the summons and the subsequent proceedings herein amounted to nothing but a nullity. A suit against a dead person is a nullity from its inception. The suit being a nullity, anything done in pursuance thereof is also a nullity. It is immaterial that the suit



was brought bona fide and that as the case herein, the Plaintiff was ignorant of the death of the person purported to be sued.

14. As was long stated in *Benjamin Leonard MC Foy v United Africa Company Limited* (1961) ALL ER 1169:

“If an act is void, then it is in law a nullity. It is not only bad but incurably bad. There is no need for an order of the Court to set it aside. It is automatically null and void without more ado, though it is sometimes convenient to have the Court declare it to be so. And every proceeding which is founded on it is also bad and incurably bad. You cannot put something on nothing and expect it to stay there. It will collapse.”

15. That is also exactly what the estate of the late Isaac J. Hunja is trying to do by this present application. Their application to be enjoined in the suit as Interested Parties is an attempt to put something on nothing and expect it to stay there. This Court will not grant that order.

16. While the estate of a deceased person may take over proceedings against him if that person were alive at the time the suit was filed, where the person was already dead at the time the suit was filed, there are no proceedings to take over as the resultant suit is a nullity.

17. In the circumstances herein I am persuaded that the suit herein is a nullity and that no further orders should issue herein. The suit as filed is incompetent, null and void *ab initio*. It is hereby struck out.

18. Each party shall bear their own costs.

Ruling dated, signed and delivered in open Court at Nyeri this 26th day of May, 2022.

In the presence of:

Mr. Muchiri wa Gathoni for the Respondent

No appearance for the Applicants

Court assistant - Kendi

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J. O. Olola

JUDGE

