



**Obiri v Elmi (Environment & Land Case E381 of 2021)  
[2022] KEELC 3554 (KLR) (12 May 2022) (Ruling)**

Neutral citation: [2022] KEELC 3554 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE E381 OF 2021**

**LN MBUGUA, J  
MAY 12, 2022**

**BETWEEN**

**JOSEPH NYAMUMBO OBIRI ..... PLAINTIFF**

**AND**

**EBADO ELMI ..... DEFENDANT**

**RULING**

1. The singular question falling for determination at this stage is whether these proceedings herein can be sustained in view of the averments advanced by one Mohamed Ali Ibrahim that Defendant died in 1990s.
2. I have considered the affidavits as well as the rival submissions presented by the warring parties. Mohamed Ali Ibrahim contends that Defendant who is his sister died years ago in 1990s. He has availed a copy of the death certificate of the Defendant which indicates that Ibado Elmi Badil died on October 10, 1990. He has also availed a certificate of confirmation of a grant issued on December 30, 2021.
3. The Plaintiff avers that the death certificate is suspicious as it was obtained 27 years after the alleged death of Defendant and that it is not clear whether Ibado Elmi Badil who is allegedly deceased is the same person as the one sued as Ebado Elmi.
4. Plaintiff further avers that if the death certificate relates to Ebado Elmi, he should then be given an opportunity to apply for joinder of Ibrahim Mohamed and the persons to whom the suit property has purportedly been distributed through the purported confirmation of a grant; that is Osman Elmi, Halima Elmi, Fatma Ahmed, Khadija Elmi and Mariam Elmi.
5. I have considered all the issues raised herein. The property being claimed by the Plaintiff is Plot No 36/11/98, which is the same property that is up for distribution in respect of the deceased estate (Ibado Elmi Bodil). I have no hesitation therefore in finding that the Defendant referred to in the suit is the one mentioned in the certificate of grant. This court has also no reason to refute the death certificate.



The issue of joinder cannot be canvassed in a suit which is certainly a nullity. The end result is that this suit cannot be sustained as Defendant is deceased. The same is hereby struck out with no orders as to costs. Any orders given earlier on are hereby discharged.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 12TH DAY OF MAY, 2022 THROUGH MICROSOFT TEAMS.**

**LUCY N. MBUGUA**

**JUDGE**

**In the presence of:-**

**Mituga holding brief for Mr. Nyamweya for the Plaintiff.**

**M/S Okoth holding brief for Mr. Itemere for the Defendant**

**Court Assistant: June Nafula**

