



REPUBLIC OF KENYA

IN THE HIGH COURT AT MILIMANI LAW COURT

ENVIROMENT & LAND CASE 2064 OF 1979

**NJURURU OLE**

**SUAKEI.....PLAINTIFF**

**VERSUS**

**HENYA KINUTHIA & 5**

**OTHERS.....DEFENDANTS**

**RULING**

This is an old matter that was filed in June 1979. The Plaintiff passed away on 20<sup>th</sup> January, 2003; that is according to a copy of a grant of letter of administration that is filed in support of the application. Even before the deceased died, it seems from the record of proceedings, no steps were taken to prosecute this matter from January 1992. Sometimes in 2011, a couple of applications were filed the record is not so clear but it would appear as if they were withdrawn, culminating with the notice of motion dated 7<sup>th</sup> October, 2011.

This is the notice of motion that seeks for several orders, that is, the substitution of the Plaintiff in this suit with ***Ndimbau Ole Njuru***, the administrator of the deceased's estate. Upon the above prayer being granted, the court is asked to issue an order preserving the following titles:

- (a) Ngong/Ngong/1303;
- (b) Ngong/Ngong/1304;
- (c) Ngong/Ngong/1305;
- (d) Ngong/Ngong/1657;
- (e) Ngong/Ngong/1447;
- (f) Ngong/Ngong/1656 and
- (g) Ngong/Ngong/1901.

All those plots arose from the subdivision of the original parcel of land known as Ngong/**Ngong/852**. The applicant also seeks for orders of injunction. This application is supported by the grounds stated on the body thereto and the matters deposed to in the supporting affidavit of ***Ndimbau Ole Njuru*** which was

sworn on 7<sup>th</sup> November, 2011.

Briefly stated, it is the applicant's case that he is the eldest son and the administrator of the estate of **NJURU SUAKEI**. He annexes a copy of the grant of letters of administration which was issued on 25<sup>th</sup> September, 2006. The deceased died on 20<sup>th</sup> January, 2003. The reasons ascribed by the applicant to the delay in applying for substitution was because he could not trace the whereabouts of the deceased's advocates so that he could establish the status of the matter. It was not until September 2010, when he came across a report by the Registrar, Kajiado which shows that there are extra acres of land that were encroached by the plots occupied by the Defendants.

This application was opposed by the respondents. It is argued on behalf of the Defendants that the suit herein abated after one year since the Plaintiff passed away.

Moreover, the Plaintiff's parcel of land title No: Ngong/Ngong/1901 was compulsorily acquired by the Government as per Gazette Notice No: 604 of 15<sup>th</sup> February, 1991, and the Plaintiff was duly compensated.

Under the provisions of **Order 24 rule 3 (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 appreciation 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.”*

The Defendants' submitted and rightly so, that the Plaintiff's suit abated on **20<sup>th</sup> January, 2004**, that is, about seven years before the applicant started to make some attempts to revive the suit. The applicant has not given any plausible reason why it took him such an inordinate period of time to seek the substitution of the Plaintiff. Secondly, court orders are not made in vain, the record of proceedings in this matter shows that even before the Plaintiff died in 2003, the last step towards the prosecution of this matter was taken in January 1992.

Moreover, for about ten years between 1992 to 2003, no steps were taken. This inaction by the Plaintiff and also the applicant lends credence to the submission by the Defendants that the Plaintiff's parcel of land was indeed compulsorily acquired by the Government of Kenya in 1991 as per the Gazette Notice No: 604 of 15<sup>th</sup> February, 1991 and after he was paid compensation he lost interest in the matter. This application is at best a mere afterthought.

For the aforesaid reasons, I find no merit in the notice of motion dated 7<sup>th</sup> October, 2011, when it dismissed with costs the Defendants as against the applicant.

**Ruling read and signed this 17<sup>th</sup> day of February, 2012.**

**MARTHA KOOME**  
**JUDGE OF APPEAL**

**Note:**

*This application was heard and concluded on **16<sup>th</sup> November, 2011**, when I was a Judge of the High Court. The matter was pending for ruling when I was appointed as a Judge of the Court of Appeal. I proceeded to write and append my signature thereto in my new capacity.*