



**Maryan Mohamed Cheabbril (Suing as The Administrator of the Estate of
Asha Jabril Mohamed (Deceased) v Mburugu & 6 others (Environment & Land
Case 001 of 2021) [2022] KEELC 4813 (KLR) (19 September 2022) (Ruling)**

Neutral citation: [2022] KEELC 4813 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ISIOLO
ENVIRONMENT & LAND CASE 001 OF 2021
PM NJOROGE, J
SEPTEMBER 19, 2022
FORMERLY ELC NO.6 OF 2019 CHUKA
FORMERY ELC NO.83 OF 2017 AT MERU**

BETWEEN

**MARYAN MOHAMED CHEABBRIL (SUING AS THE ADMINISTRATOR OF
THE ESTATE OF ASHA JABRIL MOHAMED (DECEASED) PLAINTIFF**

AND

**MICHAEL KOOME MBURUGU 1ST DEFENDANT
ISIOLO COUNTY GOVERNMENT 2ND DEFENDANT
JEDIEL KIRIMI RUTERE 3RD DEFENDANT
CHIEF LAND REGISTRAR 4TH DEFENDANT
NATIONAL LAND COMMISSION 5TH DEFENDANT
DIRECTOR OF SURVEY 6TH DEFENDANT
ATTORNEY GENERAL 7TH DEFENDANT**

RULING

1. On May 23, 2022, the 3rd defendant's advocate asked the court to allow him to file an application and submissions to the effect that the plaintiff could not delegate the person to prosecute this case to one Ahmed Khadir Mohamed.
2. This court issued the following orders;



- a. Mr Murango Mwenda’s oral application to file an application and submissions concerning his objection to Mr Ahmed Khadhir Mohamed giving evidence for the plaintiff is allowed.
 - b. Mr Murango Mwenda to file and serve his application and objection submissions within 14 days of today and all other parties are granted leave to respond within 14 days after receipt of the objection’s application and submissions.
 - c. Directions concerning this oral application to be issued during the day slated for hearing of the suit.
 - d. Mr Haji, for the National Land Commission, granted 45 days to file all his papers concerning the Maini Suit.
 - e. In view of the leave granted to Mr Haji, all parties are granted open and liberal leave to further respond, as and if necessary.
 - f. Hearing on September 19 and 20, 2022.
3. The court notes that the 3rd defendant’s advocate did not file a formal application. This is contrary to the provisions of order 51 rule 1 of the [Civil Procedure Rules](#). Order 51 rule 1 states as follows;
- “Rule 1: All applications to the court shall be by motion and shall be heard in open court unless the court directs the hearing to be conducted in chambers or unless the rules expressly provide.”
4. Advocate Mwirigi Kaburu, in his submissions asserted that the law does not allow personal representatives to delegate any discretion in matters relating to the administration of estates. He proffered the following authorities to buttress this assertion;
- a. Haji Mohamed (DSD) 2016 eKLR.
 - b. [In Re Estate of Krishan Murti Maini \(deceased\)](#) [2011] eKLR.
 - c. [Peter Kimani Nene Versus Nation Newspapers Limited](#) [2017] eKLR.
 - d. [Rebeccah Njeri Muturi Versus Violet Wambui Muturi](#) [2019] eKLR.
5. Advocate Mwirigi Kaburu’s assertions were re-asserted by advocate Murango Mwenda, the 3rd defendant’s advocate.
6. Advocate Hassan Lakicha, the plaintiff’s advocate opposed the application. In his submissions, advocate Lakicha proffered the case of Rebecca Njeri Muturi Versus Violet Njeri Muturi [2019] eKLR (Op Cit). He said that Ahmed Khadir Mohamed did not seek to usurp the powers of the administrator of the estate but was merely prosecuting this case on behalf of the administrator.
7. I have considered the authorities and the arguments proffered by the 3rd and 1st defendants to buttress their position.

The said authorities are good authorities in their facts and circumstances.

The authority proffered by the plaintiff is also a good authority in its facts and circumstances. I opine, however, that not all cases are congruent to a degree of mathematical exactitude in their facts and circumstances.



8. I agree that the plaintiff cannot delegate the authority to administer the estate of Asha Jabril Mohammed to another person. However, to the extent that she delegates the authority to prosecute this case upon one Ahmed Khadar Mohammed, this does not go against the law.

In all circumstances, a litigant and especially one who enjoys representation by an advocate, has the right to prosecute her case in the way she believes is best for her.

9. In the circumstances, I will allow the hearing of this suit to proceed today and tomorrow as was agreed by all the parties on May 23, 2022.

DELIVERED IN OPEN COURT AT ISIOLO THIS 19TH DAY OF SEPTEMBER, 2022 IN THE PRESENCE OF:

Court assistant: Balozi

Lakicha for the plaintiff

Mwirigi Kaburu for the 1st defendant

Jediel Kirimi – 3rd defendant

Ken Muriuki for the 2nd defendant.

HON JUSTICE PM NJOROGI

JUDGE

