



REPUBLIC OF KENYA



**KENYA LAW**  
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**Mwiandi & 11 others v Nakumana (Environment and Land Case Civil Suit  
257 of 2017) [2022] KEELC 15009 (KLR) (24 November 2022) (Ruling)**

Neutral citation: [2022] KEELC 15009 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO  
ENVIRONMENT AND LAND CASE CIVIL SUIT 257 OF 2017  
MN GICHERU, J  
NOVEMBER 24, 2022**

**BETWEEN**

**EVELYN GATUNE MWIANDI ..... 1<sup>ST</sup> PLAINTIFF  
JOHN MWINA LILI ..... 2<sup>ND</sup> PLAINTIFF  
ALFONCE KIOKO MUTUKU ..... 3<sup>RD</sup> PLAINTIFF  
JOHN MWOLOLO ..... 4<sup>TH</sup> PLAINTIFF  
JOHN NDUMBI KALELI ..... 5<sup>TH</sup> PLAINTIFF  
MUSYOKI PHILIP MULWA ..... 6<sup>TH</sup> PLAINTIFF  
SAMUEL KAMULI KITONGA ..... 7<sup>TH</sup> PLAINTIFF  
JOSEPH KIVUVA KIOKO ..... 8<sup>TH</sup> PLAINTIFF  
KIENDI MWOLOLO KILINGA ..... 9<sup>TH</sup> PLAINTIFF  
JOHN MAKAU MUINDI ..... 10<sup>TH</sup> PLAINTIFF  
KASYIMA MULWA MUSYA ..... 11<sup>TH</sup> PLAINTIFF  
MUUO NDAMBUKI ..... 12<sup>TH</sup> PLAINTIFF**

**AND**

**KAPOSHI NJOROGE NAKUMANA ..... DEFENDANT**

**RULING**

1. This ruling is on the notice of motion dated March 9, 2021. The said motion which is under order 24, rules 3 (1) and (2), order 51, rule 1 of the [Civil Procedure Rules](#) and sections 1A, 1B and 3A of the [Civil Procedure Act](#) is supported by three grounds, a five paragraph affidavit and one annexure.



2. The gist of all the material filed by the applicant is that she is the daughter of Everlyne Gatune Mwiaki who was the first plaintiff herein. Unfortunately, her mother died on May 13, 2019 and it was not until the November 11, 2021 when she was issued with a limited grant to enable her participate in this case. The applicant therefore prays that she be appointed the legal representative of her deceased mother for the purposes of this case only.
3. The application is opposed by the defendant who has filed three grounds of opposition namely;
  - a. That the application is fatally incompetent and devoid of merit.
  - b. That the application is time barred.
  - c. That the application is an abuse of court process.
4. Only the applicant's counsel filed written submissions on May 20, 2022. No submissions were filed by the defendant by the deadline of 90 days given on May 23, 2022.
5. I have carefully considered the application in its entirety including the affidavit, grounds in support and grounds in opposition. I find that I should consider the application while referring to the grounds of opposition. On the first ground of opposition, I find that the application is not incompetent and without merit. This is because it has all the necessary ingredients including the law under which it is based, why it was filed and the necessary material to support it including the affidavit, grounds and annexure. Secondly, I find that the application is not time barred because under order 24, rule 3(2) and the proviso thereto, this court has discretion to extend the time beyond one (1) year. In this case good reasons have been advanced as to why this application could not be filed within a year.

Finally, no reason has been advanced by the defendant in any form to prove that this application is an abuse of the court process. It is in fact a necessary step because the cause of action survives the first plaintiff, and it is said that the plaintiffs occupy the suit land.

For the above stated reasons, I allow the notice of motion dated March 9, 2021.

Order accordingly.

**DATED SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 24<sup>TH</sup> DAY OF NOVEMBER, 2022.**

**MN GICHERU**

