



REPUBLIC OF KENYA



**Njuguna v Ndungu & another (Environment & Land Case 143 of 2017)
[2022] KEELC 15087 (KLR) (24 November 2022) (Ruling)**

Neutral citation: [2022] KEELC 15087 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT & LAND CASE 143 OF 2017
BM EBOSO, J
NOVEMBER 24, 2022**

BETWEEN

FRANCIS NDUNGU NJUGUNA PLAINTIFF

AND

NAOMI NJERI NDUNGU 1ST DEFENDANT

LAND REGISTRAR, KIAMBU COUNTY 2ND DEFENDANT

RULING

1. What falls for determination in this ruling is the plaintiff's amended notice of motion dated 19/7/2022, through which the plaintiff seeks an order substituting the Public Trustee in place of Naomi Njeri Ndungu, as the 1st defendant. He also seeks an order reviving the suit/claim against the 1st defendant. The application is unopposed and it is supported by the affidavit of Gachoka Mwangi – advocate, sworn on 14/6/2022.
2. The applicant's case is that the 1st defendant died sometime in July 2017. Her family members did not initiate succession proceedings. Owing to the unwillingness of her family members to initiate succession proceedings, he was forced to take out a citation in Kiambu High Court Succession Cause No 37 of 2019. The citation was disposed in May 2021 through an order issued by Hon Lady Justice Kasango, granting the Public Trustee a Grant of Letters of Administration to administer the estate of the 1st defendant. The applicant contends that, in the absence of a duly appointed person representative, he could not apply for substitution. He adds that by the time the grant was issued to the Public Trustee the suit against the 1st defendant had already abated.
3. The court has considered the two limbs of the application and the explanation tendered in support of the application. The court has also considered the evidence tendered by the applicant. In the absence of any objection, the court is satisfied that the two orders set out in the amended notice of motion



dated 19/7/2022 are merited. The application is accordingly allowed in terms of prayers 1 and 2. Costs shall be in the cause.

4. The plaintiff shall amend the plaint, and file and serve the amended plaint within seven (7) days. Further, the plaintiff shall file and serve a single, bound, paginated and indexed bundle containing his pleadings, his witness statements and his documentary evidence within 15 days from today. In default of compliance with the order relating to the trial bundle, the suit herein shall stand dismissed.

DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA ON THIS 24TH DAY OF NOVEMBER 2022

B M EBOSO

JUDGE

Court Assistant: Ms Osodo

