



REPUBLIC OF KENYA



Omwenga & 9 others v Njoroge (Sued as the Administrator of the Estate of Paul Muchiri - Ole Ngaruiya) & 2 others (Environment & Land Case 65 of 2018) [2022] KEELC 15448 (KLR) (20 December 2022) (Ruling)

Neutral citation: [2022] KEELC 15448 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND CASE 65 OF 2018
MN GICHERU, J
DECEMBER 20, 2022**

BETWEEN

**MARCELLA OMWENGA 1ST APPLICANT
ISAIAH NYAMARI MBOTO 2ND APPLICANT
JOSEPH KIRERA NYABANDO 3RD APPLICANT
QUEEN KWAMBOKA MUGE 4TH APPLICANT
CAROLYNE MUNINI KIVUVA 5TH APPLICANT
MARY WANJIKU NGUGI 6TH APPLICANT
JOHN NGUGI KAMAU 7TH APPLICANT
STEPHEN MUTINDA KIVUVA 8TH APPLICANT
DENNIS BOSIRE NYANGENYA 9TH APPLICANT
ROBERT BAKARI BOSIRE 10TH APPLICANT**

AND

**PAULA NJABI NJOROGE (SUED AS THE ADMINISTRATOR OF THE ESTATE OF PAUL MUCHIRI - OLE NGARUIYA) 1ST DEFENDANT
THE DISTRICT LAND REGISTRAR,KAJIADO- NORTH DISTRICT 2ND DEFENDANT
THE HON. ATTORNEY GENERAL 3RD DEFENDANT**



RULING

1. This ruling is on the notice of motion dated March 22, 2022 which seeks to substitute the first plaintiff, Marcella Omwenga, with Nashon Omwenga.

The said motion is supported by five grounds, an affidavit and three (3) annexures.

The gist of the application is that the first plaintiff died on December 28, 2020 after a short illness and the applicant who is her husband needs to take up her place and continue with the suit.

2. The application is brought under sections 1A, 1B and 3A of the *Civil Procedure Act*, order 1, rule 10(4), order 8, rule 3, order 51, rule 1 of the *Civil Procedure Rules* and other enabling provisions of the law.

3. Even though the applicant was directed to serve the other parties, there is no evidence of such service.

Be that as it may, and even if it is brought under the wrong provision of law, I find that I should allow this application to expedite the conclusion of this old matter. By allowing the application, no party will suffer any prejudice because the cause of action succeeds the deceased first plaintiff.

The court has discretion under order 24, rule 3(2), *Civil Procedure Rules* to extend the period within which to appoint a legal representative of a deceased plaintiff even where a year has elapsed since the death of such a plaintiff.

4. In this case, I exercise this discretion to progress the case to conclusion.

5. It is so ordered.

DATED SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 20TH DAY OF DECEMBER, 2022.

M.N. GICHERU

JUDGE

