



Mukuha (Suing on behalf of Peter Mukuha Mwangi as the Legal Representative ad Litem) v M'turuchiu (Environment & Land Case 54 of 2019) [2022] KEELC 15357 (KLR) (14 December 2022) (Ruling)

Neutral citation: [2022] KEELC 15357 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT & LAND CASE 54 OF 2019
CK NZILI, J
DECEMBER 14, 2022**

BETWEEN

CAROLINE WANGUI MUKUHA (SUING ON BEHALF OF PETER MUKUHA MWANGI AS THE LEGAL REPRESENTATIVE AD LITEM) PLAINTIFF

AND

M'RUKARIA M'TURUCHIU DEFENDANT

RULING

1. On September 19, 2022 the court gave the plaintiff a last chance to file an application for substitution of the deceased defendant. The same was to be done within one month in default of which the suit shall stand dismissed for both non-compliance and non- prosecution.
2. The matter came up on October 24, 2022 but the plaintiff had not complied with the earlier orders. He sought to withdraw the suit with no order as to costs. This was opposed by counsel for the defendant given that the orders of September 19, 2022 were self-executing and had taken effect. Counsel urged for costs since the matter was part heard.
3. It is the defendant who passed on going by the information relayed to the court on April 27, 2022 by counsel appearing for him, Mr Kiruai. The plaintiff had closed their case on February 3, 2022. The reasons given for non-substitution is that of disagreements among the family members of the deceased defendant. The plaintiff cannot be blamed for that. Similarly, counsel for the defendant ideally has no client to instruct them to urge for the costs.
4. The general rule is that costs follow the event. In *Jasbir Singh Rai & 3 others v Tarlochan Singh Rai Estate of & 4 others [2013] eKLR*, the Supreme Court of Kenya held that there are exceptions to the general rule. In this case, the reason(s) given to discontinue the suit are lack of a substitute to take out



letters of administration for the estate of the deceased defendant and disagreements over the same by potential parties to the suit.

5. Order 25 rules 1 & 2 of the [Civil Procedure Rules](#) grant the court powers to allow for the discontinuance of a suit on an application by the plaintiff. Counsel for the deceased defendant has not opposed the application to discontinue or withdraw the claim.
6. In the circumstances the court allows for the discontinuance of the suit under order 25 rule 2 of the [Civil Procedure Rules](#). The court finds no justification to penalize the plaintiff or award costs to the deceased defendant or his counsel on record under the circumstances.

DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS

THIS 14TH DAY OF DECEMBER, 2022

In presence of:

C/A: Kananu

No appearance

HON C K NZILI

ELC JUDGE

