



REPUBLIC OF KENYA



**KENYA LAW**  
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**Murichu v Muniu & another (Environment & Land Case 3253 of 1995)  
[2022] KEELC 15627 (KLR) (8 December 2022) (Ruling)**

Neutral citation: [2022] KEELC 15627 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE 3253 OF 1995  
LN MBUGUA, J  
DECEMBER 8, 2022**

**BETWEEN**

**KARERI MURICHU ..... PLAINTIFF**

**AND**

**WILSON MUNIU ..... 1<sup>ST</sup> DEFENDANT**

**WAMANDE KIMERIA ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. Before me an application dated November 25, 2021 where the plaintiff seeks orders that one Hannah Wanjiru Muniu be made a party to this suit and that the plaint be amended accordingly. The application is premised on the grounds set out on the face of the application and on the supporting affidavit of the applicant.
2. The plaintiff avers that during commencement of this suit in the year 1995, the 1st defendant known as Wilson Muniu was in occupation and use of the subject property Kiambaa/mucathat/T 312. Not any more. That it is Hannah Wanjiru Muniu who is now openly perpetuating the tort of trespass upon the suit land despite being issued with an eviction notice dated November 17, 2018. Thus the proposed party is a necessary party to this suit.
3. The application is opposed by the 1st defendant *vide* his Grounds of Opposition dated July 20, 2022 where he contends that: The application is frivolous and vexatious, and a gross abuse of the court process as joinder of one Hannah Wanjiru Muniu is ousted by dint of section 4 of the *limitation of Actions Act* as the alleged cause of action against the defendants as pleaded in paragraph 4 of the plaint occurred on October 20, 1995.
4. It is further argued that the suit against the 2nd defendant has already abated by dint of order 24 rule 4 (3) of the *Civil Procedure Rules* as the said party passed on in year 2017, hence there is no valid suit to be substituted and that the proposed defendant has no locus standi to defend the suit as she is not



the legal Administrator of the deceased, defendant's estate and that no exhibits have been availed to support the claim of the applicant.

5. I have considered all the arguments advanced herein. I find that in paragraph 6 of the proposed amended plaint, it is indicated that the 1st and 3rd (read Hannah Wanjiru Muniu) defendants have been in occupation of the plaintiffs land since the institution of the suit which is 1995. The limitation of Actions Act prescribes limitation period for the institution of suits in regard to various causes of action. The cause of action herein is based on alleged trespass which is capped at 3 years after 1995.
6. It is the finding of this court the claim is time barred hence the joinder of the proposed 3rd defendant is not merited.
7. It is not lost to this court that sometime back, the applicant had attempted to bring Hannah Wanjiru on board via his application dated January 18, 2018. That move was thwarted by this court via a ruling delivered on October 25, 2018. The court will not rehash the contents of that ruling, needless to say that the issue of abatement and substitution were covered in that ruling.
8. All in all, I find that the application is not merited. The same is hereby dismissed with costs to 1<sup>st</sup> defendant.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 8TH DAY OF DECEMBER, 2022 THROUGH MICROSOFT TEAMS.**

**LUCY N. MBUGUA**

**JUDGE**

**In the presence of:-**

H. Kinyanjui for 1<sup>st</sup> and 2<sup>nd</sup> Defendants

Joan Njoroge holding brief for Muigai for Plaintiff/Applicant

Court Assistant: Eddel/Vanilla

