



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT OF KENYA**

**AT MOMBASA**

**ELC NO. 174 OF 2014**

**ZAINULABIDIN YUSUFALI DAR (Suing as personal representative of**

**the estate of YUSUFALI ADAMALI DAR) & 2 OTHERS.....PLAINTIFFS**

**VERSUS**

**MWANAJUMA ALI BUWA & 3 OTHERS.....DEFENDANTS**

**AND**

**YUSUFU MOHAMED SIKONDO.....APPLICANT**

**RULING**

(Application for substitution of the deceased 1<sup>st</sup> defendant; applicant holding a grant ad litem; application allowed)

1. The application before me is that dated 2 June 2020 filed by Yusufu Mohamed Sikondo who seeks to substitute the deceased 1<sup>st</sup> defendant one Mwanajuma Ali Buwa. In the supporting affidavit, the applicant has averred that he is the first born son of the deceased 1<sup>st</sup> defendant and is familiar with this case. He has further deposed that the 1<sup>st</sup> defendant died on 2 October 2019 and he has annexed a copy of the certificate of death. He has also annexed a grant ad litem, issued to him by the Principal Magistrate's Court at Kwale, limited for purposes of substituting the deceased 1<sup>st</sup> defendant in this suit.

2. I can see that the plaintiffs in this case assert that they are the genuine owners of the land parcel Kwale/Msambweni "A"/1666. They contend that the 1<sup>st</sup> and 2<sup>nd</sup> defendants became registered as owners of the disputed land by way of fraud, and in the suit, they wish to have orders for the cancellation of the title of the 1<sup>st</sup> and 2<sup>nd</sup> defendants. Clearly therefore, the suit against the 1<sup>st</sup> defendant survives the death of the 1<sup>st</sup> defendant and can therefore be continued against her estate.

3. I have no reason to deny the order of substitution and I allow the application to that extent. I therefore make the order that the deceased 1<sup>st</sup> defendant be substituted by the applicant herein. I further direct that the plaint be amended within 14 days to reflect the substitution. I make no orders as to costs.

4. Orders accordingly.

**DATED AND DELIVERED THIS 21 DAY OF JANUARY, 2021**

**JUSTICE MUNYAO SILA**

**JUDGE, ENVIRONMENT AND LAND COURT OF KENYA**

**AT MOMBASA**