



**Maranga (Suing as the legal administrator of the Estate of Stephen Maranga Obegi) & 3 others v Saul & 5 others (Environment & Land Case E023 of 2022) [2025] KEELC 1143 (KLR) (11 March 2025) (Ruling)**

Neutral citation: [2025] KEELC 1143 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KISII  
ENVIRONMENT & LAND CASE E023 OF 2022**

**M SILA, J  
MARCH 11, 2025**

**BETWEEN**

**WILFRED OBEGI MARANGA (SUING AS THE LEGAL ADMINISTRATOR OF THE ESTATE OF STEPHEN MARANGA OBEGI) ..... 1<sup>ST</sup> PLAINTIFF  
DOUGLAS GICHABA GICHANA (SUING AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF JUSTUS GICHANA OBEGI) ..... 2<sup>ND</sup> PLAINTIFF  
JOSEPH OCHWERI OBEGI ..... 3<sup>RD</sup> PLAINTIFF  
HUDSON OCHWERI MARANGA OBEGI (SUING AS LEGAL REPRESENTATIVE OF THE ESTATE OF PERIS NYAMAANA OBEGI) ..... 4<sup>TH</sup> PLAINTIFF**

**AND**

**STANLEY OBINO SAUL ..... 1<sup>ST</sup> DEFENDANT  
ALFRED OMWENGA SAUL ..... 2<sup>ND</sup> DEFENDANT  
KISII COUNTY SURVEYOR ..... 3<sup>RD</sup> DEFENDANT  
THE COUNTY LAND REGISTRAR ..... 4<sup>TH</sup> DEFENDANT  
DIRECTOR OF SURVEY ..... 5<sup>TH</sup> DEFENDANT  
THE HONOURABLE ATTORNEY GENERAL ..... 6<sup>TH</sup> DEFENDANT**

**RULING**

(Application for substitution; date of death of deceased litigant sought to be substituted not disclosed; fatal not to disclose the date of death; application struck out)



1. The application before me is that dated 2 July 2024 filed by Kennedy Gichaba Obegi who wishes to substitute the 4<sup>th</sup> plaintiff who is said to be deceased. The supporting affidavit is sworn by the applicant. He avers that the suit was commenced on 11 November 2022 by four plaintiffs among them being his father Hudson Ochweri Maranga Obegi, the 4<sup>th</sup> plaintiff, who had filed suit as Legal Administrator of the estate of Peris Nyamaina Obegi (deceased). He states that his father passed on and there is need to substitute him. He deposes that he has since been constituted as the legal administrator ad litem and desirous of stepping into the shoes of the deceased 4<sup>th</sup> plaintiff so as to proceed with the matter. To his application, he has annexed an order and a copy of a grant of letters of administration ad litem, issued to him on 19 April 2024 in the suit Kisii Chief Magistrates' Court Miscellaneous Succession Cause No. E286 of 2024, *In the Matter of the Estate of Peris Nyamaina Obegi (deceased)*.
2. The application is opposed by the 1<sup>st</sup> and 2<sup>nd</sup> defendants who filed Grounds of Opposition. They oppose the application for reason that the applicant does not disclose when the 4<sup>th</sup> plaintiff, who is being substituted, died, and the application offends Order 24 Rule 3 (2).
3. I directed the application to be argued through written submissions and I have taken note of the submissions filed.
4. I observe that in his submissions, Mr. O.M Otieno for the applicant, submitted inter alia that the 4<sup>th</sup> plaintiff died on 31 October 2023. He has submitted that not disclosing the date of death in the application is not fatal and that the fact that the court has constituted a new administrator is enough proof that the erstwhile administrator is deceased. He has also submitted that the death of the 4<sup>th</sup> plaintiff does not affect the suit as the 4<sup>th</sup> plaintiff was suing as legal administrator of Peris Nyamaina Obegi. He has added that the suit has not abated as the 4<sup>th</sup> plaintiff died on 31 October 2023 as per Keroka Miscellaneous Succession Cause No. E006 of 2024 where letter of administration ad litem were issued on 6 March 2024.
5. On the other hand, Mr. Momanyi Aunga in his submissions submitted that the documents annexed to the application do not indicate who died and further that the order issued appears in respect of the case *Kennedy Gichaba Obegi v Kennedy Gichaba Obegi* and is not clear whether it is a civil suit or succession cause.
6. I have taken the above into account.
7. This is an application for substitution and Order 24 Rule 3 is applicable. It states :
  3. Procedure in case of death of one of several plaintiffs or of sole plaintiff
    - (1) Where one of two or more plaintiffs dies and the cause of action does not survive or continue to the surviving plaintiff or plaintiffs alone, or a sole plaintiff or sole surviving plaintiff dies and the cause of action survives or continues, the court, on an application made in that behalf, shall cause the legal representative of the deceased plaintiff to be made a party and shall proceed with the suit.
    - (2) Where within one year no application is made under subrule (1), the suit shall abate so far as the deceased plaintiff is concerned, and, on the application of the defendant, the court may award to him the costs which he may have incurred in defending the suit to be recovered from the estate of the deceased plaintiff:

Provided the court may, for good reason on application, extend the time.
8. From the above, it will be observed that where the suit has more than one plaintiff, and one of them dies, the court first checks whether the cause of action may be continued by the surviving plaintiffs. If



not then the deceased plaintiff will need to be substituted. If he is not substituted within one year of death, then the suit abates unless the court for good reason extends the time.

9. It cannot therefore be overemphasised that the date of death is critical in assessing whether or not to allow an application for substitution. The reason is that the suit may have abated and it is not in all instances that the court will allow an extension of time for substitution or to revive an abated suit. An application for substitution which does not disclose the date of death could very well make the application fatal for failing to disclose a material fact. Indeed, good practice would require that the Certificate of Death be annexed, to prove the fact of death and the date of death.
10. In our case the date of death is neither disclosed in the application nor in the supporting affidavit and the Certificate of Death is not annexed. Purportedly, the date of death is mentioned in submissions, but that is a material fact that requires to be disclosed in the affidavit and an issue that can even be subject of an independent scrutiny and cross-examination, if necessary, by the other party. It is not good enough to purport to disclose it in an affidavit.
11. There are other issues raised by Mr. Momanyi touching on the suit where the order for administration of the estate of Peris Nyamaina was made but I need not go into them as I have already found the application fatal for failure to disclose the date of death.
12. I would, for reason that the date of death is not disclosed, order that this application be struck out with costs to the 1st and 2nd defendants.
13. Orders accordingly.

**DATED AND DELIVERED THIS 11 DAY OF MARCH 2025**

**JUSTICE MUNYAO SILA**

**JUDGE, ENVIRONMENT AND LAND COURT**

**AT KISII**

Delivered in the presence of :

Mr. O.M Otieno for the applicant

Mr. Momanyi Aunga for the 1<sup>st</sup> & 2<sup>nd</sup> respondents

Mr. Wabwire, State Counsel, for the 3<sup>rd</sup> – 6<sup>th</sup> respondents

Court Assistant – Michael Oyuko.

