



Muchene & another v Muchene & 2 others (Environment & Land Case 841 of 2014) [2024] KEELC 748 (KLR) (14 February 2024) (Ruling)

Neutral citation: [2024] KEELC 748 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 841 OF 2014
LN MBUGUA, J
FEBRUARY 14, 2024**

BETWEEN

EDWARD KINUTHIA MUCHENE 1ST PLAINTIFF

PETER MBUGUA MUCHENE 2ND PLAINTIFF

AND

SIMON MACHARIA MUCHENE 1ST DEFENDANT

MARGARET WAITHIRA MUKIRI 2ND DEFENDANT

REUBEN KIBUE THIONG'O 3RD DEFENDANT

RULING

1. Before me is the Notice of Motion application dated 22.11.2023, where the Plaintiffs seek orders to extend time within which to apply for leave to enjoin the legal representative of the 2nd Defendant (deceased) as a party in this suit, as well as orders to substitute her with her legal representative to wit, Geoffrey Muchene Mukiri.
2. The application is based on grounds on its face and on the 1st Plaintiff's supporting affidavit sworn on 22.11.2023. He avers that sometimes in 2020, they learnt of the death of the 2nd Defendant and following advise by their counsel, he approached the 2nd Defendant's eldest son, one Geoffrey Muchene Mukiri and asked him to take out a limited grant of letters of Administration ad litem so as to join the suit on behalf of his mother but he failed to do so.
3. That the plaintiffs then filed a citation in the family division of the High Court in the cause HCF P&A/ E584/2022, and obtained a limited grant of letters of administration ad litem for Geoffrey Muchene Mukiri on 25.9.2023.
4. They aver that the delay in filing this application was due to reluctance by the 2nd Defendant's family to have the latter substituted.



5. The application is opposed by the proposed 2nd Defendant, Geoffrey Muchene Mukiri vide his replying affidavit sworn on 14.12.2023 where he contends that the suit already abated and that he did not consent to being appointed as administrator to the estate of the 2nd Defendant, and he has applied for revocation of the said grant.
6. The application is also opposed by the 3rd Defendant vide the replying affidavit sworn on 13.12.2023 by Muturi Kamande, advocate in conduct of the matter for the 3rd Defendant. He avers that the 1st Defendant passed away on 18.6.2020, the 2nd Defendant on 28.1.2020 and the 3rd Defendant on 26.8.2022 thus this suit has long abated for all intent and purposes.
7. I have considered all the issues raised herein. Going by the proceedings of 9.12.2020, the plaintiffs were aware of the demise of the 1st and 2nd defendants by that date. On 19.10.2022, counsel for the plaintiffs further informed the court that he had learnt of the death of the 3rd defendant, which information was confirmed by his advocate. None of the said defendants were substituted within a year of each death as required under Order 24 Rule 4 of the Civil Procedure Rules.
8. However, the provisions of Order 24 Rule 7 (2) of the Civil Procedure Rules stipulate that an abated suit may be revived if sufficient cause is established.
9. The Plaintiffs admitted that they learnt of the 2nd Defendant's death in 2020. They filed an application dated 3.7.2021 in an attempt to substitute the 2nd Defendant, but the same was dismissed on 27.1.2022. Thereafter, they filed for citation in the family court on 31.3.2022 and eventually obtained a grant on 25.9.2023.
10. I find that the Plaintiffs have established sufficient cause to warrant the orders sought. They have demonstrated that they were actively pursuing the suit, and they filed the citation against the 2nd Defendant's son after they had attempted to revive this suit vide the application dated 3.7.2021.
11. Further, the fact that Geoffrey Muchene Mukiri is still opposed to being enjoined herein shows that the 2nd Defendant's family members were not willing to take up the matter relating to substitution of the 2nd defendant.
12. In the end, I find that the application dated 22.11.2023 is merited. The same is hereby allowed. Costs thereof shall abide the outcome of the suit.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 14TH DAY OF FEBRUARY, 2024 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

In the presence of:-

Mogikoyo for Plaintiff

Muturi for deceased 3rd Defendant

Court assistant: Eddel

