



**Njiru ((Suing as Administrator of the Estate of Juliana Mbuya Njiru)) v Ngiri & 2 others
(Environment & Land Case 5 of 2017) [2024] KEELC 1434 (KLR) (5 March 2024) (Ruling)**

Neutral citation: [2024] KEELC 1434 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT EMBU
ENVIRONMENT & LAND CASE 5 OF 2017**

**A KANIARU, J
MARCH 5, 2024**

BETWEEN

**ROBINSON KIMATHI NJIRU (SUING AS ADMINISTRATOR OF THE ESTATE
OF JULIANA MBUYA NJIRU) PLAINTIFF
(SUING AS ADMINISTRATOR OF THE ESTATE OF JULIANA MBUYA NJIRU)**

AND

**PITHON NJIRU NGIRI 1ST DEFENDANT
NGUYO KARANJA 2ND DEFENDANT
MARGARET MBUCU MATHURI 3RD DEFENDANT**

RULING

1. The plaintiff in this case had filed a suit by way of Plaint dated 15.04.2011 which was amended on 03.11.2017 and amended further on 11.02.2019. She was seeking to be registered as the owner of parcel no. Embu/Kithunthiri/1484 in place of the defendants who were said to have acquired title to the same by way of fraud. In the alternative, she sought to be declared to have become entitled to the land by way of adverse possession.
2. The defendants opposed the said suit by way of a defence and counterclaim dated 31.05.2011 and amended on 05.12.2017 denying the plaintiff's claim entirely. It was also their case that they had purchased the said land for valuable consideration and sought to have the plaintiff declared as a trespasser in the said land. The court heard all the parties and in a judgement delivered on 27.02.2020 found in favour of the defendants. The plaintiff however passed away on 14.02.2020 during pendency of the judgment.
3. In an application dated 24.03.2020 and amended on 19.05.2020, Robinson Kimathi Njiru applied to be substituted in place of the deceased plaintiff as her personal representative, orders for change of



- advocate, orders for stay of execution and an order of inhibition prohibiting any dealings with the suit land as they intended to file an appeal. The court on the date set for hearing of the application,
4. .that is on 26.05.2020, allowed for the substitution of the plaintiff and the change of advocates. The court however directed that the others prayers would be canvassed by way of written submissions.
 5. The court upon hearing the parties found that the plaintiff had not made a case for the grant of the orders of stay of execution or inhibition. It formed the opinion that the plaintiff had not filed an appeal in order to be entitled to orders of stay of execution. This was because the plaintiff had merely filed an application to seek leave to file the appeal out of time and it was not clear at the time whether the application was being prosecuted. The court also found in the alternative that orders for stay of execution as well as inhibition had been overtaken by events as the defendants had already taken possession of the suit land and cultivated crops thereon. The court dismissed the said application.
 6. What is now before me for determination is a Notice of Motion application dated 06.12.2022 and filed on 08.12.2022 brought under a Certificate of Urgency. It is expressed to be brought under Order 42 Rule 6, Order 9 rule 10 of the Civil Procedure Rules. The Applicant – Philip Ngari Njiru - is said to be the appointed administrator to the estate of the Plaintiff who is deceased. He is seeking to be joined in the suit as a co-plaintiff as he says he holds the full grant to the deceased estate whereas the other personal representative (Robinson Kimathi Njiru) already joined in the suit possesses only the grant ad litem. The prayers sought are as follows:
 1. Spent
 2. That this court do join Phillip Ngari Njiru as a co-plaintiff in this matter.
 3. Costs be provided for.
 7. The application is premised on the grounds set out on the face of the application and on the supporting affidavit sworn on 06.12.2022 by the applicant - Phillip Ngari Njiru - inter alia; that he is the son of the late Juliana Mbuya Njiru who was the plaintiff herein. That his family filed a succession cause for their mothers estate, being Embu E056 of 2020, and he was appointed by the court as the administrator of the estate of Juliana Mbuya Njiru. That his brother Robinson Kimathi Njiru had obtained letters of administration ad litem and had been substituted in the case on behalf of their mother.
 8. That this case was heard and judgement delivered on 27.02.2020 and he was not satisfied with the same. That the family of the deceased plaintiff has agreed that as he is the administrator of the estate, he should take over the conduct of this case since he holds the full grant. That the plaintiff had filed an application for leave to appeal out of time and the same may be delivered any time now and he intends to file the appeal if court grants the leave.
 9. The application was responded to by the 3rd Defendant - Margaret Mbucu Mathuri - on behalf of the other defendants through a replying affidavit sworn on 10.05.2023. She deposed, inter alia, that the application is bad in law and fatally defective. That the suit herein was concluded on 27.02.2020 and execution of the judgment was done and therefore nothing remains to be done in this file. That the suit property has been subdivided into numerous portions and the portions are in the hands of the 3rd parties – mostly purchasers who are not parties in this case. That the intended substitution will serve no purpose and the court should make an order closing the file. That there is already a substituted administrator for purposes of this suit. They urge the application to be dismissed with costs.
 10. It was agreed that the application be disposed of by way of written submissions. The Applicant filed their submissions on 30.06.2023 whereas the Respondent opted not to file any. The applicant submitted that he ought to be joined as a co-plaintiff notwithstanding that there's a judgement in this



matter. That Order 1 Rule 10(2) of the Civil Procedure Rules empowers the court at any stage of proceedings to order joinder of any party necessary for effective adjudication a suit. He cited the cases of Willis Ochieng Odhiambo v Kenya Tourist Development Corporation & Anor Kisumu HCCC No. 51 of 2007 and David Kiptugen v Commissioner of Lands Nairobi & 4 Others (2016) Eklr to support his position.

11. I have taken into consideration the said application, the replying affidavit, as well as the Applicants submissions. I find that the issue for determination is whether the notice of motion has merit.
12. It is my view that this is only a matter for exercise of discretion. Judgement in this matter has already been delivered. It is said that the said judgement has already been executed, which fact the applicant has admitted to in his submissions. It is also said that the applicant has made an application for leave to appeal out of time in the higher court whose ruling he says may be delivered any time now. It is not certain that the applicant will be granted leave to file the said appeal out of time. So what happens should this court grant the applicant his orders and the appellate court declines to admit the appeal out of time? Then the said orders will just be left hanging in the air. It has been said time and time again that court orders are not issued in vain. They are meant to be complied with. This court cannot grant orders in anticipation of an uncertain outcome. I think the best move for the applicant is to wait for the appellate court to admit his appeal. He can then make this application before that court. In any case, as has rightly been pointed out by the Respondents there is already appointed a personal representative to the deceased in the suit and therefore the deceased is already adequately represented.
13. For these reasons, I find that the notice of motion application dated 06.12.2022 lacks merit and a hereby dismiss it.
14. I will not make any orders as to costs.

RULING DATED, SIGNED AND DELIVERED IN OPEN COURT AT EMBU THIS 5TH DAY OF MARCH, 2024.

IN THE PRESENCE OF KAMUNDA FOR ANN THUNGU FOR THE APPLICANT AND AKOTSI FOR MR. MUGAMBI NJERU FOR THE RESPONDENT.

Court assistant: Leadys

A. KANIARU

JUDGE –ELC, EMBU

