



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MACHAKOS

ELC. CASE NO. 285 OF 2017

(Formerly Civil Case No. 267 of 2016)

CHARLES KARANJA NJUGUNA.....1ST PLAINTIFF

JOSEPH NGUGI KABIRU.....2ND PLAINTIFF

JANE WAMUYU NDIRITU.....3RD PLAINTIFF

(Suing on their behalf and on behalf of 170 others all known as

JUMBO COMMUNITY SELF HELP GROUP).....4TH PLAINTIFF

VERSUS

SALOME NJOKI MUHIA.....1ST DEFENDANT

JUSTUS WAINAINA NJUGUNA.....2ND DEFENDANT

GODFREY KARANJA GACHAGO.....3RD DEFENDANT

PETER MAINA NDEGWA.....4TH DEFENDANT

JAMES WAINAINA NDUNGU.....5TH DEFENDANT

ROSEMARY NGONYO WAMUNYU.....6TH DEFENDANT

RULING

1. In the Application dated 24th January, 2020, the Plaintiffs have prayed for the following orders:

a. That Joseph Ndungu Thiong'o be substituted in place of Charles Karanja Njuguna who passed away on the 28th day of January, 2019.

b. That the costs of this Application be provided for.

2. The Application is supported by the Affidavit of the 2nd Plaintiff who has deponed that he is the Secretary of the Plaintiffs' Company; that the Chairman of the Plaintiffs' Company passed away on 28th January, 2019 and that they now have a new Chairman whom they want to be enjoined in this suit. According to the 2nd Plaintiff, it is only fair that the new Chairman be substituted in place of the deceased one.

3. In response, the 2nd Defendant deponed that the gist of this case is that they are the officials of the Self Help Group as per the last returns from the Department of Social Services and that over and above disputing the leadership of the deceased, them as the officials of the Self Help Group are not aware of any elections which have taken place to elect the said Joseph Ndungu Thiong'o as the Chairman.

4. The 2nd Defendant deponed that there is no record or return from the Registrar -Self Help Group to prove that there have been any

elections in the Self Help Group and that the substitution of the deceased cannot therefore be legally allowed.

5. In brief submissions, the Plaintiffs' advocate submitted that the Plaintiffs seek to substitute the 1st Plaintiff who passed away on the 28th January, 2019 with one Joseph Ndungu Thiong'o; that the basis of the suit herein is the same claim that the Defendants are alluding through their Replying Affidavit and that the issue of whether the Defendants are the *bona fide* officials of the Self Help Group cannot be dealt with at this case.

6. It was submitted that it is unfortunate that the 1st Plaintiff passed away before the determination of this suit; that in order to proceed with the prosecution of this case, there is need for his substitution and that the existing members considered it prudent for his substitution and therefore held a meeting on 21st January, 2020 where more than 300 members appeared, and gave consent of and the mandate to the said Joseph Ndungu Thiong'o to take over the office of the Chairman of the Self Help Group herein pending the hearing and the determination of the suit herein.

7. Counsel submitted that the substitution of the 1st Plaintiff with the proposed Joseph Ndungu Thiong'o will in no way prejudice the Defendants' case and that the Application should be allowed.

8. On his part, the Defendants' advocate submitted that Jumbo Community Self Help Group was duly registered on 26th August, 2016; that the Defendants are the *bona fide* officials of the said Self Help Group; that there being no elections to elect or replace the Chairperson, this court cannot admit the said Joseph Ndungu Thiong'o into these proceedings and that the Application should be dismissed.

9. It is not in dispute that the 1st Plaintiff, now deceased, filed this suit claiming that he is the Chairman of Jumbo Community Self Help Group.

10. In the said Plaint, the deceased, together with the 2nd and 3rd Plaintiffs, challenged the elections of the Group that was conducted on 15th July, 2016, and the registration of the Defendants as the officials of the Group. The Plaintiffs have prayed for the following orders in the Plaint:

a. That the purported elections held on 15th July, 2016 be and is hereby nullified.

b. That the registration of the Defendants as officials of Jumbo Community Self Help Group be cancelled and the previous office bearers be reinstated.

c. That the Defendants be restrained from in any way interfering with the management of Jumbo Community Self Group.

11. The only issue therefore before the court is whether as at 15th July, 2016, the three Plaintiffs were the elected officials of the Group, and whether after the purported meeting of 15th July, 2016, they were ousted from the office by the Defendants.

12. The only instance in which a party can substitute a deceased Plaintiff or Defendant is where the cause of action survives the deceased (*See Order 24 Rule 2 and 3 of the Civil Procedure Rules*). Where the cause of action survives the deceased party, the law allows the substitution of the deceased with his/her legal representative.

13. The issue of whether the 1st Plaintiff was validly elected as the Chairman of the Group or not was personal, and his cause of action cannot survive him. If the proposed Chairman was elected after the filing of this suit, that can only be a new cause of action, and has nothing to do with the validity of the election of the deceased Plaintiff. In any case, can it be said that because the proposed Plaintiff having been elected to replace the 1st Plaintiff as the Chairman of the Group, he is therefore the legal representative of the deceased Plaintiff? That cannot be so.

14. Considering that the cause of action herein could not have survived the 1st Plaintiff, and the proposed Plaintiff being not the legal representative of the 1st Plaintiff (*the deceased*), the proposed Plaintiff cannot substitute the deceased 1st Plaintiff. However, the Plaintiffs are at liberty to call the proposed Plaintiff as a witness in this matter.

15. For the said reasons, I find the Application dated 24th January, 2020 to be unmeritorious. The Application is dismissed with costs.

DATED, SIGNED AND DELIVERED VIRTUALLY IN MACHAKOS THIS 30TH DAY OF APRIL, 2021

O. A. ANGOTE

JUDGE