



Muga ((Suing as the legal representative of the Estate of Anita Karambu M'Murunga - Deceased)) v Mukiri (Environment & Land Case 323 of 2017) [2023] KEELC 662 (KLR) (8 February 2023) (Ruling)

Neutral citation: [2023] KEELC 662 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT & LAND CASE 323 OF 2017
CK NZILI, J
FEBRUARY 8, 2023**

BETWEEN

**JULIUS KINOTI MUGA PLAINTIFF
(SUING AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF ANITA
KARAMBU M'MURUNGA - DECEASED)**

AND

FESTUS RUBARA MUKIRI DEFENDANT

RULING

1. This ruling relates to two applications dated October 24, 2022 and November 13, 2022 hereinafter the 1st & 2nd applications. In the 1st application the court is urged to review, uplift or set aside orders made on October 11, 2022 dismissing the plaintiff's suit. The reasons as contained in the supporting affidavit by Sammy Chacha advocate sworn on October 24, 2022 are that in order to comply with the directives issued on July 30, 2022 the applicant obtained a limited grant ad litem on September 8, 2022 in Meru Chief Magistrates Succession Cause No 123 of 2022 but there was delay in signing the order and the placement of the same in this suit. That the mistakes of counsel should not be visited upon an innocent applicant. The applicant has attached a copy of the said application, the grant signed on November 1, 2022 and some follow up letters as annexures CS 1-5 respectively.
2. In the 2nd application, the court is asked to allow for the substitution of the plaintiff with her legal representatives Julius Kinoti Muga now possessed with a limited grant of letters of administration based on a supporting affidavit of Chacha Sammy advocate sworn on the even date. The applicant had attached a copy of death certificate and the grant as annexures CS "1" 1 and 2 respectively.
3. The application is opposed through a replying affidavit to Festus Rubara Mukiri the 2nd respondent sworn on November 28, 2022. The grounds are that the application is frivolous and a waste of courts



- time since the suit is already dismissed. That the 1st application has not been served. That the court directives were not adhered to hence the dismissal following some inordinate delay and inability to prosecute the suit for over five years. That the interest of justice favors disallowing the application given the application to dismiss the suit dated February 1, 2022
4. With leave of court, parties put in written submissions dated November 23, 2022 and 4.12.2022 and the respondents copy undated but filed on December 16, 2022.
 5. For the 1st application the plaintiff submitted that the failure to comply with the substitution directions within 60 days was occasioned at the lower court by the delay in signing the grant until November 1, 2022. It was submitted that the application for substitution has also been made within the stipulated one year under the law. Reliance was placed on article 159 (2) (d) of the Constitution, section 80 of the Civil Procedure Act, orders 24 rule 7 (2) and 45 rule 3 (2) of the Civil Procedure Rules and Dorothy Mumbua Mutune & another v Design Forte Ltd C.A No. 559 of 2018.
 6. On the 2nd application the plaintiff submitted that the intended party has obtained limited grant of letters of administration so as to prosecute the suit within the statutory period of one year under order 24 rule 7 of the Civil Procedure Rules. Reliance was placed on Mbaya Nzulwa v KPLC (2018) eKLR.
 7. The respondents submitted that under order 24 rules 3 & 7 of the Civil Procedure Rules the applicant has not provided sufficient cause for non-compliance with the directives of April 20, 2022 and that substitution without a reinstatement of the suit was a nullity in law. Reliance is placed on Muranga Misc Application No. 6 of 2019 Julius Maina Kabiru v Kabiru Kangara & Tomas Irungu Kigori.
 8. The court has gone through the applications, the response and the written submissions. The record of the court indicates that by an affidavit sworn by Godfrey Kinyani Mbugua on November 21, 2022 and filed on November 24, 2022, the process server served the 1st application to the defendant's counsel by way of an email on November 21, 2022 at 9.02 am and as well as a hearing notice dated November 22, 2022. Parties thereafter appeared in court on November 24, 2022 and the 2nd defendant never raised an issue as to the service of the application.
 9. Order 45 of the Civil Procedure Rules and section 80 of the Civil Procedure Act grants the occur powers to review, vary or set aside its orders inter alia for any sufficient cause. In this application, the order for the dismissal of the suit was occasioned by the failure to comply with orders issued on February 17, 2022, April 20, 2022 and July 20, 2022 in which the applicant was given more than sufficient time to substitute and prosecute the suit.
 10. The applicant attributes the delay to the lower court registry. Going by the supporting affidavit, the application for grant was allowed on September 8, 2022 but the grant was only signed on November 1, 2022, the day this notice of motion was filed. The death certificate was issued on June 27, 2022. It is not clear why the applicant had to delay for close to two months to lodge the application for grant. On October 11, 2022, though the applicant stated there was already a grant issued there was no application before the court for substitution. The applicant's counsel merely asked the court to give directions on the mode of hearing the originating summons yet he knew very well that without substitution, the court could not proceed with a matter where the plaintiff was already dead.
 11. Similarly, the advocate present did not mention before court any difficulties he was having regarding the signing of the limited grant. Be that as it may, the court thus looked at the correspondence attached to the application with the lower court registry. The blame cannot wholly be attributed to the court registry for communication by way of an email was not the only means the applicant would have fast tracked the signing of the grant. There is no indication if the applicant made other follow ups by way of phone calls. Nevertheless, I find the explanation reasonable and amounting to sufficient cause.



12. Coming to the 2nd application, the deceased plaintiff passed on on March 8, 2022. The limited grant was issued on November 1, 2022 while this application was filed on November 18, 2022, which is less than a year from the date of death. The case law of Dorothy Mumbua Mutune and another (supra) is inapplicable since the applicant herein is not seeking for any enlargement of time to substitute the deceased plaintiff.
13. Consequently, I allow the two applications with costs. The amended originating summons to be filed within 14 days and the defendant shall have 15 days to file any amended response.

DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT THIS 8TH DAY OF FEBRUARY, 2023

In presence of:

C/A: Kananu

Makori for Chacha for plaintiff/applicant

Koech for Kaumbi for defendants

HON. C.K. NZILI

ELC JUDGE

