



**Wang'odu (Administrator ad litem to the Estate of Leah Watetu
Wangangi – Deceased) v Mwangi & 13 others (Environment & Land
Case 54 of 2018) [2023] KEELC 474 (KLR) (2 February 2023) (Ruling)**

Neutral citation: [2023] KEELC 474 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYERI
ENVIRONMENT & LAND CASE 54 OF 2018**

**JO OLOLA, J
FEBRUARY 2, 2023**

BETWEEN

**STANLEY WANG'ONDU (ADMINISTRATOR AD LITEM TO THE ESTATE OF
LEAH WATETU WANGANGI – DECEASED) APPLICANT**

AND

JOSEPH MUCHIRI MWANGI 1ST DEFENDANT
DAVID NDEGWA MWANGI 2ND DEFENDANT
MOSES KAMAU MWANGI 3RD DEFENDANT
STEPHEN MAINA WAIRAGU 4TH DEFENDANT
ANN MUTHONI KING'ORI 5TH DEFENDANT
DAVID MUGWE MACHARIA 6TH DEFENDANT
PETER KAMUNYA MWANGI 7TH DEFENDANT
CHARLES KIMANI MAINA 8TH DEFENDANT
ISAAC MUNENE NYAMBURA 9TH DEFENDANT
LIVING OASIS IN THE WILDERNESS CHURCH 10TH DEFENDANT
PERMANENT SECRETARY TREASURY 11TH DEFENDANT
LAND REGISTRAR – NYERI 12TH DEFENDANT
DISTRICT SURVEYOR – NYERI 13TH DEFENDANT
ATTORNEY GENERAL 14TH DEFENDANT



RULING

1. By his application dated February 3, 2022, Stanley Wang'odu on the basis of being the administrator *ad litem* of the estate of Leah Watetu Wangangi (the deceased) prays for orders:
 1. That the honourable court be pleased to revive the applicant's suit against the defendants;
 2. That upon revival of the suit, this honourable court be pleased to extend the time by which the plaintiff/applicant may apply for substitution of the defendants;
 3. That upon such leave being granted, this honourable court be pleased to substitute Leah Watetu (deceased) with Stanley Wang'odu who is the son and administrator *ad litem* to the estate of the said Leah Watetu (deceased); and
 4. That the costs abide the main cause.
2. The application which is supported by an Affidavit sworn by the said Stanley Wang'odu is premised on the grounds that:
 - (i) The plaintiff passed away on February 1, 2020 during the pendency of this suit;
 - (ii) The suit as against the defendants abated on February 1, 2021 upon there being no substitution;
 - (iii) The applicant was later appointed as the administrator *ad litem* to the estate of the deceased plaintiff;
 - (iv) The applicant was prevented by sufficient grounds from making this application within the prescribed time; and
 - (v) It is in the interest of justice that he said application be allowed.
3. The application is opposed by a number of the defendants/respondents. David Mugwe Macharia (the 6th defendant) is opposed to the application. In his Replying Affidavit sworn on June 9, 2022, the 6th defendant avers that the application is misconceived and an abuse of the court process. The 6th defendant avers that the applicant is a troublesome person and that if any order was given to him to act as a representative of the estate, the same was done without the involvement of family members.
4. Peter Kamunya Mwangi (the 7th defendant) is equally opposed to the grant of the orders sought. In his Replying Affidavit equally sworn on June 9, 2022, the 7th defendant explains that the Applicant is his elder brother and that as a family they never consented to his being made a personal representative for their mother's estate.
5. The 7th defendant avers that before his death, their father had given a portion of land to the 10th defendant church and that he had sub-divided his land and transferred the same to his wife and children leaving none in his name.
6. Isaac Munene Nyambura (the 9th defendant) is similarly opposed to the application. In his Replying Affidavit also sworn on June 9, 2022, the 9th defendant avers that he is a purchaser of the portion of land in his possession and that the applicant had sufficient time to file the application but failed to do so.
7. Peter Mbugua Chege, a pastor in-charge of Living Oasis in the Wilderness Church (the 10th defendant) is also opposed to the application. In his Replying Affidavit sworn on June 9, 2022, he avers that the



- application is belated and that the same ought to be dismissed. The 10th defendant denies that courts were closed during the relevant time to stop the Applicant from filing the application in time.
8. The 10th defendant avers further that the applicant did not participate in the funeral of his mother Leah Watetu and that there is no good reason advanced to warrant revival of the suit as the applicant is only acting in bad faith.
 9. Eddah Nyaguthi Nyago (the 11th defendant) is also opposed to the application. In a similar Affidavit sworn on June 9, 2022, the 11th defendant adopts the affidavit of the 10th defendant and asserts that the applicant is merely creating an excuse to keep the defendants in court.
 11. I have carefully perused and considered both the application and the respective responses thereto. I have similarly perused and considered the submissions and authorities placed before me by the learned advocates for the Parties.
 12. The applicant herein urges the court to revive the suit filed herein by his now deceased mother against the defendants. He further urges the court to be pleased to substitute the late Leah Watetu's name with his own on account that he has been issued with a grant *ad litem* to the estate of the deceased.
 13. As to whether the court should revive an abated suit and extend time for substitution of a deceased person, Order 24 Rule 7 of the [Civil Procedure Rules](#) provides thus:

“The Plaintiff or the person claiming to be the legal representative of a deceased Plaintiff or the trustee or official receiver in the case of a bankrupt Plaintiff may apply to revive a suit, which has abated or set aside an order of dismissal, and, if it is proved that he was prevented by any sufficient cause from continuing the suit, the Court shall revive the suit or set aside such dismissal upon such terms as to costs or otherwise as it thinks fit.”
 14. According to the applicant, his mother who was the plaintiff herein passed away on February 1, 2020 and he was later on issued with a grant of letter of administration *ad litem* for the estate of the deceased plaintiff. The respondents have denied that the applicant was made a legal representative of the deceased's estate and from a perusal of the application and the Supporting Affidavit, it was not clear to the court when, if at all, the applicant was issued with the said letters as none is exhibited in his application.
 15. As it were, it is a mandatory requirement of law that the applicant should have obtained a limited *ad litem* or grant of letters of administration intestate before instituting the present application. The applicant does not acquire *locus standi* to come to this court by the mere fact that he is a son to the deceased. He must first apply to the court for a limited grant *ad litem* to be issued in his favour before he can address the court on any issue concerning the estate of the deceased.
 16. It follows that in the absence of any evidence that the applicant applied for and was issued with the grant, this application has no legs to stand on and must fail. I dismiss the same.
 17. Each Party shall bear their own costs.

**RULING DATED, SIGNED AND DELIVERED IN OPEN COURT AND VIRTUALLY AT NYERI
THIS 2ND DAY OF FEBRUARY, 2023.**

In the presence of

Mr S K Njuguna for the respondents

No appearance for the applicant



Court assistant - Kendi

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J O OLOLA

JUDGE

