



**Kinoti (As Legal Representative of the Estate of Esther Kiutha M’mbui) v Arachi & 2 others
(Environment & Land Petition 10 of 2017) [2023] KEELC 17260 (KLR) (3 May 2023) (Ruling)**

Neutral citation: [2023] KEELC 17260 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT & LAND PETITION 10 OF 2017**

**CK NZILI, J
MAY 3, 2023**

BETWEEN

**FREDRICK KINOTI (AS LEGAL REPRESENTATIVE OF THE ESTATE OF
ESTHER KIUTHA M’MBUI) PETITIONER**

AND

**STEPHEN MURIUKI ARACHI 1ST RESPONDENT
CHARLES MUTWIRI RINTAUGU 2ND RESPONDENT
MINISTRY OF LANDS 3RD RESPONDENT**

RULING

1. The court is asked to grant leave to the applicant Fredrick Kinoti to substitute Esther Kiutha M’Mmbui who passed on June 3, 2022; stay/review and set aside the orders made on February 23, 2022; reinstate the petition for hearing and lastly allow the petition to be amended to include the Land Registrar and the Attorney General as 4th and 5th respondents respectively.
2. The grounds of the application as contained on the face of it and are that the applicant is a beneficiary to the estate of the deceased following grant of letters of Administration ad Litem following her death in 2020. That her advocates on record were unaware of her death and so were the beneficiaries. That the beneficiaries only became aware of the judgment in March 2022 out of summons by the area chief, who had obtained a copy from the respondents seeking to exhume the body of the petitioner from the said premises. That the matter was determined after the death of the petitioner who was not heard.
3. Esther Kiutha M’Mmbui now deceased filed a petition dated July 21, 2017 claiming that her rights to fair administrative action and to own land had been violated by the respondents in the manner LR No Kiiirua/Maitai-Naari/182 had allegedly been registered in the name of the 1st respondent in 1974 despite her occupation of the same. She expressed her fear of an eviction, sought for the replacement of her names in the register with that of the 1st respondent and for the quashing of the orders removing a



- caution she had placed on the register through Meru CMCC 331 of 2015 between the 1st respondent and herself.
4. The petition was opposed through replying affidavits sworn on April 5, 2018 and March 14, 2018 respectively in which they attached copies of search, sale agreement and a title deed issued on March 24, 2017 in favour of the 2nd respondent. Subsequent to this the petitioner filed list of witnesses and sworn witness affidavits dated July 17, 2018. The petitioner was duly represented until directions were issued on November 2, 2022 for the petition to be disposed off by way of written submissions based on the affidavit evidence filed by the respective parties.
 5. In this application, there is no indication that the firm seeking to represent the applicant has complied with Order 9 Rule 9 of the *Civil Procedure Rules*. Further, it is alleged that the former advocates were not aware that their client had passed on, on June 3, 2020 and that she was condemned unheard. In as much as the petitioner may have been dead, from the record it is appreciated that the petition was determined based on sworn testimony and documentation available as at July 17, 2018 which includes her supporting affidavit and annexures to the petition.
 6. The duty was on the advocate on record then to bring it to the attention of the court that her client was no more. Miss Aketch advocate was also appearing in this matter.
 7. The court pronounced itself on the matter on February 23, 2022 and it is not explained why there was inordinate delay of over a year if at all the judgment came to the attention of the applicant in March 2022.
 8. Order 1 Rule 10 (2) of the *Civil Procedure Rules* allows for joinder of parties at any stage of proceedings. As to whether a party can join a suit, post-judgment the court in *Robert Gitbua Thuku v William Ole Nabala & 9 others (2018) eKLR*, was faced with a situation where an applicant had alleged that he had learned of the judgment, whose effect was to nullify his title deed, hence depriving him land without being heard. He therefore had sought to re-open the concluded proceedings. The primary court had found the application devoid of merit hence the appeal.
 9. The trial court had held that even though application for joinder should ideally be made prior to conclusion of a suit, the court while exercising its inherent power, could nevertheless set aside its decision and direct such joinder if it was shown that a bona fide party should have been joined who would adversely be affected by the judgment. The Court of Appeal held a party seeking to join a suit must demonstrate interest and that the circumstances of its status justified the joinder as long as the joinder would prejudice the other parties or convolute the matter as held in *AG v Kenya Bureau of Standards & Another (2018) eKLR* and *Alfred Njau & 5 others v City Council of NRB (1983) eKLR*. The court dismissed the appeal since no demonstration of interest or evidence of adverse effect had been demonstrated.
 10. Further in *Douglas Bundi Kirimi v Joseph Kaberia Arimba (2018) eKLR*, the court held that for a party to seek to join a petition post-judgment he has to surmount some constitutional hurdles as per Rule 7(1) of the *Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practices and Procedure Rules*, 2013 (Mutunga Rules). The court cited with approval *Lucy Nungari Ngigi & 128 others v NBK Ltd & another (2015) eKLR* that the determining factor in joinder of parties is that there is a common question of fact or law between the existing and the intended parties.
 11. Additionally, the court cited with approval *IMK v MWM & another (2015) eKLR* that Order 1 Rule 10 (2) *Civil Procedure Rules* contemplates joinder in pending proceedings as well as *Bellevue Development Co Ltd v Vinayak Builder Ltd & another (2014) eKLR*. Joinder of parties is possible post-judgment, in among other cases of the representative suit, substitution and or in the execution process.



The court said that the interested party had to show the merits of the joinder after judgment. The court cited with approval *Trusted Society of Human Rights Alliance v Mumo Matemu & 5 Others (2014) eKLR*, that an interested party must have stake in the proceedings demonstrate the likely effect on him by the decision and must articulate the interest he wants to champion if joined to the suit.

12. In this application, whereas there is no dispute that the petitioner passed on and that the applicant is now possessed with a limited grant the question is whether there is before this court basis to re-open the proceedings.
13. It cannot be true as indicated above that the petitioner was condemned unheard. The court in its judgment addressed the merits and demerits of the petition. The court is already functus officio on the issue of the manner of registration and transfer of the subject property and misjoinder or joinder of parties.
14. The upshot is that I find the application lacking merits. The same is dismissed with costs.

**DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT MERU
THIS 3RD DAY OF MAY 2023**

HON C K NZILI

ELC JUDGE

In presence of

C.A John Paul

Aketch for the applicant

