



**Orina v Nyabicha & 18 others (Environment & Land Case  
463 of 2016) [2023] KEELC 18624 (KLR) (12 July 2023) (Ruling)**

Neutral citation: [2023] KEELC 18624 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KISII  
ENVIRONMENT & LAND CASE 463 OF 2016**

**M SILA, J**

**JULY 12, 2023**

**BETWEEN**

**MARIA NYANSARORA ORINA ..... PLAINTIFF**

**AND**

**JULIUS NGUBO NYABICHA & 18 OTHERS ..... DEFENDANT**

**RULING**

Application for substitution of the deceased 3rd defendant; application allowed

1. The application before me is that dated 12 June 2023 filed by Lydia Kwamboka Songoro, who seeks orders that she be allowed to substitute the deceased 3<sup>rd</sup> defendant, one Isaac Ouru Songoro. In the supporting affidavit, the applicant avers to be the widow of the deceased who died on 19 March 2022. She has annexed a grant of letters ad litem which she obtained.
2. I have gone through the record and I observe that the suit herein was commenced through a plaint which was filed on 29 June 2011 against 19 defendants. The plaintiff pleaded to have been the registered proprietor of the land parcel South Mugirango/Bogetenga/2007. It is claimed that the 1<sup>st</sup> defendant alongside the other defendants, caused this land to be subdivided into 22 portions. The 3<sup>rd</sup> defendant was said to own one of the subdivisions which is the parcel South Mugirango/Bogetenga/2722. In the plaint, the plaintiff seeks orders for the nullification of these subdivisions. The defendants filed a joint statement of defence refuting the plaintiff's claim. The status of the suit is that it is partly heard with the plaintiff having given evidence.
3. Though the application herein is said to be brought pursuant to Order 1 Rule 10, the applicable law is clearly Order 24 Rule 4 of the [Civil Procedure Rules](#) which provides as follows :-

Order 24 Rule 4, Procedure in case of death of one of several defendants or of sole defendant



- (1) Where one of two or more defendants dies and the cause of action does not survive or continue against the surviving defendant or defendants alone, or a sole defendant or sole surviving defendant dies and the cause of action survives or continues, the court, on an application made in that behalf, shall cause the legal representative of the deceased defendant to be made a party and shall proceed with the suit.
  - (2) Any person so made a party may make any defence appropriate to his character as legal representative of the deceased defendant.
  - (3) Where within one year no application is made under subrule (1), the suit shall abate as against the deceased defendant.
4. From the above, it will be seen that a deceased defendant may be substituted if the cause against him survives his death. In our case, the cause of action persists despite the death of the 3<sup>rd</sup> defendant as the plaintiff wishes to nullify the title which is registered in his name. The only issue is that an application for substitution ought to be made within one year of death, and indeed, Mr. Momanyi, learned counsel for the plaintiff did point this out when the application came up for inter partes hearing. The rejoinder of Mr. Sagwe was that there was delay in obtaining the grant.
  5. The reason does not quite wash as I see that the grant ad litem was obtained on 8 December 2022 yet this application was filed on 13 June 2023, more than 6 months thereafter. I do not think that good reason has been given for the late substitution.
  6. Despite no good reason having been given, I think it would be just that I revive the abated suit, under Order 24 Rule 7, and allow the substitution of the deceased 3<sup>rd</sup> defendant. Without the substitution, even the plaintiff would be handicapped in proceeding against the title held in the name of the 3<sup>rd</sup> defendant.
  7. I therefore revive the abated suit against the 3<sup>rd</sup> defendant and allow the applicant to substitute him. I do not see the need to amend the pleadings, but let it be noted that the suit against the 3<sup>rd</sup> defendant will be continued against the applicant as the legal representative ad litem.
  8. I make no orders as to the costs of this application.
  9. Orders accordingly.

**DATED AND DELIVERED AT KISII THIS 12 DAY OF JULY 2023**

**JUSTICE MUNYAO SILA**

JUDGE, ENVIRONMENT AND LAND COURT

AT KISII

