



Nderitu & 5 others v Ndiara Enterprises Limited (Environment & Land Case 5 of 2010) [2023] KEELC 20519 (KLR) (5 October 2023) (Ruling)

Neutral citation: [2023] KEELC 20519 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 5 OF 2010
LN MBUGUA, J
OCTOBER 5, 2023**

BETWEEN

**BERNARD MWANGI NDERITU 1ST PLAINTIFF
HESBON OMONDI 2ND PLAINTIFF
FRANCIS RUMANO 3RD PLAINTIFF
PETER WAMBUGU 4TH PLAINTIFF
STEPHEN KAMAU 5TH PLAINTIFF
MARY WAMBU (DECEASED) 6TH PLAINTIFF**

AND

NDIARA ENTERPRISES LIMITED DEFENDANT

RULING

1. Some parties have passed on in this matter, thus the case was mentioned on October 3, 2023 to gauge the progress of substitution of the parties who are deceased Mr Nyamberi for 3rd and 4th defendants in case No 5 of 2010 as well as M/s Kariuki for plaintiff in case No 128/2020 were in agreement that the 6th plaintiff in case No 5 of 2010 (Mary Wambui) died several years ago, thus her case had Abated.
2. Mr. Nyamberi further informed the court that his client, one Peter Wambugu the 4th defendant in case No 5 / 2010 died in March this year and that the widow of the deceased has promised to avail the death certificate. Thus there is no grant yet. He prays for an extension to substitute in 30-45 days.
3. Mr. Nyamberi holding brief for Mrs. Owino also sought extension of time to produce a death certificate in respect of one Patrick Mukaria, the 7th defendant in case No 128/2020.
4. In opposition, M/s Kariuki prays for a hearing date contending that no efforts have been made to substitute the deceased parties and that for Rukaria, he died way back on October 16, 2020.



5. I have considered the applications made, the responses thereof as well as the record.
6. The records of the court indicate that this matter was listed for hearing on June 28, 2023 and June 29, 2023. However on June 29, 2023 Mrs Owino indicated that they had a letter signed by Mr. Nyambergi stating that

“ They lost 4th plaintiff and the family is in the process of substituting.....”
7. Today, it has emerged that the 4th plaintiff died way back in March, but Mr. Nyambergi doesn't even have a death certificate which means the process of substitution has not commenced.
8. For Patrick Rukaria a death certificate availed indicates that he died on October 16, 2020. Thus there is no case for or against him.
9. In the final analysis, I give orders as follows:
 1. The case for or against 6th plaintiff (Mary Wambui) in No 5/2010 is marked as Abated.
 2. The case for or against the 7th defendant Peter Rukaria in case No 128/2020 is marked as abated.
 3. The court directs the parties to take a hearing date.
 4. Mr. Nyambergi is however at liberty to file a relevant application for substitution of 4th defendant within 45 days (by November 20, 2023).

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 5TH DAY OF OCTOBER, 2023 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

In the presence of:-

B. Kariuki for Plaintiff

Nyambergi holding brief for Mrs Owino for 5th Plaintiff in 5 of 2010 and the 11th and 18th Defendants in 128 of 2016

Bosire for 5th Defendant in 128 of 2016

Hesbon Omondi in person

Court Assistant: Eddel

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