



**Nkirote v The Land Registrar Meru County & 12 others; Mworia (Applicant) (Environment & Land Case E017 of 2021) [2023] KEELC 20505 (KLR) (4 October 2023) (Ruling)**

Neutral citation: [2023] KEELC 20505 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MERU  
ENVIRONMENT & LAND CASE E017 OF 2021**

**CK NZILI, J**

**OCTOBER 4, 2023**

**BETWEEN**

**CELINA NKIROTE ..... PLAINTIFF**

**AND**

**LAND REGISTRAR MERU COUNTY ..... 1<sup>ST</sup> DEFENDANT**

**ATTORNEY GENERAL ..... 2<sup>ND</sup> DEFENDANT**

**LAND ADJUDICATION AND SETTLEMENT OFFICE ..... 3<sup>RD</sup> DEFENDANT**

**MERU COUNTY SURVEYOR ..... 4<sup>TH</sup> DEFENDANT**

**GIDEON MUGAMBI MWORIA ..... 5<sup>TH</sup> DEFENDANT**

**M'MBOROKI NDURA ..... 6<sup>TH</sup> DEFENDANT**

**JULIUS KIMATHI MUNGANIA ..... 7<sup>TH</sup> DEFENDANT**

**AFUSA GRACE SULEIMAN ..... 8<sup>TH</sup> DEFENDANT**

**YUNUS ADAM MUTHAMIA ..... 9<sup>TH</sup> DEFENDANT**

**JOSEPH HUNYU THIRIKWA ..... 10<sup>TH</sup> DEFENDANT**

**PRISCILLA MWARI ..... 11<sup>TH</sup> DEFENDANT**

**MERCY KANYIRI ..... 12<sup>TH</sup> DEFENDANT**

**MICHAEL MWIRIGI MAITIMA ..... 13<sup>TH</sup> DEFENDANT**

**AND**

**MURIUKI KIJANA MWORIA ..... APPLICANT**



## RULING

1. By an application dated May 21, 2023, the court is asked under Order 24 Rules 1 & 3 (1) of the Civil Procedure Rules to allow for the substitution of the 11<sup>th</sup> defendant with John Githinji Hunyu, a representative of the estate of the deceased defendant since the cause of action has survived him. The proposed defendant relies on the affidavit sworn on May 25, 2023, where he states that he is the son of the deceased but was yet to apply for letters of administration. He says their house was brought down as per the attached copy of a chief's letter marked JGH "1".
2. Order 24 Rule 4 of the Civil Procedure Rules grants the court the power to cause a legal representative of the deceased defendant to be made a party to the suit and proceed with the same when the cause of action survives or continuous, if the application is made within one year of the death of the defendant. No death certificate has been attached to this application as proof of the date the 11<sup>th</sup> defendant passed on. The proposed party admits that he was yet to seek and obtain the letters of grant ad litem.
3. The law only allows for a legal representative to join a suit. In this instance, the proposed defendant cannot represent the estate of the deceased 11<sup>th</sup> defendant. In Sarah Kobilu Chebii and another vs David Chesang (2019) eKLR, the court observed that a legal representative under Section 2 of the Civil Procedure Act meant one who, in law, represents the estate of a deceased person as defined under the Law of Succession Act, having acquired a grant of representation. The court said that without a grant, such a party could not lawfully be substituted in place of a deceased party to a suit for lack of capacity, for he cannot implement an order of the court by disposing of the assets of the deceased under Section 45 of the Law of Succession Act.
4. In Trouistik Union International & another vs Jane Mbeya & another (1993) KLR 230, the court observed that a legal representative is a person appointed as such by a probate court under the Law of Succession Act.
5. Since there is no competent party to be substituted with the deceased defendant, I find the application incompetent. The same is dismissed with no order as to costs.
6. A notice shall also be issued upon the plaintiff and his advocates on record to show cause why this suit should not be dismissed for non-compliance to be heard on October 30, 2023.

**DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT MERU**

**ON THIS 4<sup>TH</sup> DAY OF OCTOBER 2023**

**In presence of**

**C.A Kananu**

**Arithi for Muthomi Njeru for the applicant**

**Miss Maina holding brief for Mbaikyatta for 1st – 3rd defendants**

**Mboos Mutunga for plaintiff**

**HON. CK NZILI**

**ELC JUDGE**

