



**Ochengo & another v Ogechi & 3 others (Environment & Land Petition 3 of 2021) [2023] KEELC 20582 (KLR) (11 October 2023) (Ruling)**

Neutral citation: [2023] KEELC 20582 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NYAMIRA  
ENVIRONMENT & LAND PETITION 3 OF 2021**

**JM KAMAU, J  
OCTOBER 11, 2023**

**BETWEEN**

**OLIVER B. OCHENGO ..... APPLICANT**

**AND**

**DANIEL OCHENGO OENDO ..... PETITIONER**

**AND**

**DAVID OKERIO OGECHI ..... 1<sup>ST</sup> RESPONDENT**

**NYAMBANE NYANCHONGI ..... 2<sup>ND</sup> RESPONDENT**

**DISTRICT LAND REGISTRAR, NYAMIRA ..... 3<sup>RD</sup> RESPONDENT**

**THE ATTORNEY GENERAL ..... 4<sup>TH</sup> RESPONDENT**

**RULING**

1. This suit was dismissed on 21/09/2023 for non-attendance. On the said date the Petition dated October 17, 2013 came up for Hearing and only Mr. Nderitu was present in court for the 3<sup>rd</sup> and 4<sup>th</sup> respondent. No one appeared for the petitioner and the other respondent. When the matter was called up at 9. 30a.m, the file was placed aside to allow the petitioner time to show up. At 10.30a.m. again no one showed up for the petitioner. The Petition was consequently dismissed by the court.
2. On 08/06/2023, the petitioner moved the court with a Motion urging the court to re-consider its Decision of dismissing the Petition and reinstate the same. Counsel for the petitioner also urged the court to substitute the petitioner with his wife one Oliver B. Ochengo since the petitioner died on 05/07/2022. A copy of the certificate of death is attached to the application as Exhibit OBO – 1. Limited Grant of Letters of Administration (Ad Litem) is also attached to the application as OBO -2 giving the said Ms. Ochengo letters of administration (Ad Litem) in respect of the Estate of the petitioner herein. The said Oliver B. Ochengo depones in her Affidavit in support of the application



sworn on 08/06/2023 that on 27/07/2022 when the matter came up for Hearing the petitioner had died but no one brought this fact to the attention of the court. The petitioner's Advocate was not informed of the next Hearing date and that is why he never turned up in court on 21/09/2022.

3. In opposition to the said application, the 2<sup>nd</sup> respondent has filed a replying affidavit sworn on 17/07/2023 deponing that his Advocate had served the petitioner's Advocate with a Hearing Notice for 27/07/2022. No such evidence has been produced. He also claimed that the Applicant, Oliver B. Ochengo has no legal capacity to bring this application "as she has not applied for nor obtained letters of administration in respect of the Deceased's Estate. This again is not accurate as all that one needs is an ad litem Grant which Ms. Ochengo has already annexed to her application. He also states that the Petition herein has no chances of success and gone ahead to give reasons for the opinion. We are not at the moment interested with the merit of otherwise of the Petition.
4. As to the applicant's prayer being allowed to be substituted in place of the petitioner, the same is allowed.
5. On the prayer of setting aside the orders of 21/09/2022 and the reinstatement of the suit, I take cognizance of the court records of 27/07/2022 that there was no appearance for the petitioner nor his Advocate on the material date. The petitioner was by then deceased. Although the petitioner's Advocate should have explained why he himself did not turn up in court, the sins of an Advocate cannot be visited on his client and worse so an already dead client. In spite of the 2<sup>nd</sup> Respondent having been in court on 27/07/2022 his Advocate was not in court and he told the court that his Advocate had told him to come to court without an indication as to whether he (the Advocate) would also come to court. He was ordered to serve the petitioner. I have not seen a Hearing Notice. I cannot speculate whether by this time the 2<sup>nd</sup> respondent knew that the petitioner had died but did not to bring this to the attention of the court. But nevertheless, there is no evidence the petitioner's Advocate was served with a hearing notice and this could explain why he never turned up in court on 21/09/2022. The 1<sup>st</sup> & 2<sup>nd</sup> respondent also never turned up in court. Only counsel for the 3<sup>rd</sup> & 4<sup>th</sup> respondent did. The 2<sup>nd</sup> Respondent can therefore not benefit from and take advantage of the petitioner's death when he himself did not turn up in court for the Hearing having been the only one who knew about the hearing date. The orders of 21/09/2022 dismissing this Petition for non-attendance are hereby set aside and this Petition is reinstated. The same shall be heard within the next 60 Days from the date of this ruling.

**RULING DATED AND DELIVERED AT NYAMIRA THIS 11TH DAY OF OCTOBER 2023.**

**MUGO KAMAU**

**JUDGE**

In the Presence of:

petitioner: Mr. Okenye holding brief for Mr. Mokuu

respondent: Mr. Ranah for the 3<sup>rd</sup> & 4<sup>th</sup> respondent.

