



Phillip (Suing as the personal representative of the Estate of Hellen Mokeira Ayora) v Ayora & 4 others (Environment & Land Case 189 of 2013) [2023] KEELC 21567 (KLR) (14 November 2023) (Ruling)

Neutral citation: [2023] KEELC 21567 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISII
ENVIRONMENT & LAND CASE 189 OF 2013**

**M SILA, J
NOVEMBER 14, 2023**

BETWEEN

MELLEN KEMUNTO PHILLIP (SUING AS THE PERSONAL REPRESENTATIVE OF THE ESTATE OF HELLEN MOKEIRA AYORA) PLAINTIFF

AND

**YUVINALIS ONCHURU AYORA 1ST DEFENDANT
CHARLES AYORA SANGARA 2ND DEFENDANT
PETER ATANDI NYABUTI 3RD DEFENDANT
GEORGE M OPANGA 4TH DEFENDANT
THE LAND REGISTRAR-KISII COUNTY 5TH DEFENDANT**

RULING

1. The application before me is that dated 16 March 2023 and filed on 11 April 2023 by the plaintiff. The plaintiff seeks leave to amend the plaint.
2. The record shows that the suit was commenced through a plaint filed on 19 April 2013 wherein the applicant sued four individuals as the 1st – 4th defendants and the Land Registrar, Kisii, as the 5th defendant. The plaintiff is suing on behalf of the estate of Hellen Mokeira Ayora (deceased). It is her case that the deceased owned the land parcel Nyaribari Chache/B/B/Boburia/1588 until December 2010. It is averred that the 4th defendant, who was the Chief at that time, wrote a letter to the 5th defendant directing him to remove a caution lodged so as to pave way for its subdivision equally between the 1st and 2nd defendants. It is averred that the land was thereafter subdivided into the land parcel Nyaribari Chache/B/B/Boburia/9508, in names of the 1st and 2nd defendants, No. 9509 in name



- of the 2nd defendant, No. 9510 in name of the 3rd defendant, No. 9511 in name of the 1st defendant, and No. 9512 in name of both the 1st and 2nd defendants. In the suit the plaintiff wished for orders to have the subdivisions cancelled so that they can revert back to the original No. 1588 in name of the deceased.
3. The 1st and 2nd defendants filed a joint statement of defence and the 3rd defendant filed his separate defence through other counsel. The 4th defendant has yet to enter appearance. The long and short of it is that the 1st and 2nd defendants, and the 3rd defendant, refuted the claims of the plaintiff.
 4. In this application, the plaintiff contends that the 1st and 2nd defendants have sold the disputed property to third parties. It would appear that it is those third parties that the plaintiff now seeks to join into the suit through an amendment of the plaint. Within that application, there is also attached a Certificate of Death of the 1st defendant, indicating that he died on 4 November 2021. The proposal in the draft amended plaint is to remove him from the suit.
 5. Nobody opposed the application to amend and I have no reason to deny it. I will allow the application. However, the plaintiff, if she is removing the original first defendant, Yuvenalis Ochuru Oyora (deceased), from the suit, then ought not to have Charles Ayora Sangara as 2nd defendant. Indeed, the numbering of the defendants needs to change so that the removal of the original 1st defendant, will invite another person to be introduced as first defendant and the sequence to follow in that fashion. Save for that, the plaint may be amended as the plaintiff so wishes. The amended plaint be filed within 14 days and be served in the usual manner.
 6. There will be no orders as to the costs of this application.
 7. It is so ordered.

DATED AND DELIVERED AT KISII THIS 14 DAY OF NOVEMBER 2023

JUSTICE MUNYAO SILAS

JUDGE, ENVIRONMENT AND LAND COURT

AT KISII

In the presence of: -

Mr. Nyamurongi for the 1st & 2nd defendants.

Mr. O.M Otieno for the 3rd defendant.

Mr. Ndiritu, State Counsel, for the 5th defendant.

No appearance on the part of M/S Rioba Omboto & Co. for the plaintiff.

No appearance for 4th defendant.

Court – Assistant – Lawrence Chomba.

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