

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

ELC CASE NO. 41 OF 2018

ESTHER KANUGU MURIUNGIPLAINTIFF

VERSUS

JOHN MBAABU MWIITHIMBU.....1ST DEFENDANT

CHARLES GATOBU MWITHIMBU2ND DEFENDANT

RULING

1. The plaintiff by an application dated 28.10.2021 seeks to have Zipporah Ndumba Gatobu joined as a party to this suit in place of the 2nd defendant who passed on 31.10.2020. The application is supported by an affidavit sworn on 28.10.2021 by Esther Kanugu Muriungi.
2. The reasons given are that the 2nd defendant passed on during the pendency of this suit but her daughter the proposed defendant was appointed as a legal representative to the estate as per the attached limited grant hence the need to bring her to the case.
3. **Order 24 Rule 4** provides that upon the death of a defendant where a cause of action survives, the court on an application shall cause a legal representative of the deceased defendant to be made a party and shall proceed with the suit and if the application to substitute is not made within a year, the suit shall abate as against the deceased defendant.
4. In this suit, the 2nd defendant passed on 31.10.2020 while this application was filed on 28.10.2021. This was within the timeframe given by the law.
5. In the premises, I am inclined to grant the orders sought.
6. Consequently, I direct the plaint be amended as appropriate and be served upon the aforesaid legal representative who in line with **Order 24 Rule 4 (2)**, shall be at liberty to put in a defence within 15 days upon service with the amended plaint.

Orders accordingly.

DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS AT MERU THIS 2ND DAY OF FEBRUARY, 2022

IN PRESENCE OF:

KIRUJA FOR PLAINTIFF/APPLICANT

DEFENDANTS - ABSENT

COURT KANANU

HON. C.K. NZILI

ELC JUDGE