



**Ndolo v Muturi & another (Environment & Land Case  
192 of 2016) [2022] KEELC 3273 (KLR) (6 July 2022) (Ruling)**

Neutral citation: [2022] KEELC 3273 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA  
ENVIRONMENT & LAND CASE 192 OF 2016**

**M SILA, J**

**JULY 6, 2022**

**BETWEEN**

**RAPHAEL NDOLO ..... PLAINTIFF**

**AND**

**SAMUEL MUTURI & ANOTHER ..... DEFENDANT**

**RULING**

**(Application for substitution of the deceased plaintiff; application allowed)**

1. The application before me is that dated 8 March 2022 filed by Rose Musengya Ndolo, Esther Mwelu Raphael, and Charles Ndolo Raphael. They bring this application under the provisions of Order 24 Rule 1, and 3 (1) of the *Civil Procedure Rules*, 2010 and what they seek is to substitute the plaintiff, who is said to be deceased. In the application they aver that the plaintiff died on 6 July 2021 and that the suit survives his death. They thus wish to substitute the deceased and continue with the suit. They have displayed the Certificate of Death and a grant of letters of administration ad litem limited for purposes of instituting or defending a suit.
2. The deceased had commenced this suit vide a plaint filed on 15 July 2015. He claimed to be the owner of the Plot No. 25xx (Original No. 4xx/3) Section VI, Mainland North. He contended that the defendants have illegally entered the land and fraudulently procured title to it. In the suit, he wished to have orders permanently restraining the defendants from the suit property.
3. This cause of action certainly survives the death of the deceased plaintiff and can be continued by his personal representatives. I also observe that the defendant died on 6 July 2021, and this application was filed before lapse of one year of his death. The case has therefore not abated.
4. I have no reason not to allow this application and it is hereby allowed. The applicants may proceed to substitute the deceased plaintiff and the plaint may be amended accordingly within 14 days. I make no orders as to the costs of this application.



5. Orders accordingly.

**DATED AND DELIVERED THIS 6 DAY OF JULY 2022.**

**JUSTICE MUNYAO SILA**

**JUDGE, ENVIRONMENT AND LAND COURT AT MOMBASA**

