



M'ringera v The Public Trustee Meru County & 6 others; Nyamu (Applicant) (Environment and Land Case Civil Suit 16 of 2020) [2022] KEELC 13511 (KLR) (5 October 2022) (Ruling)

Neutral citation: [2022] KEELC 13511 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT AND LAND CASE CIVIL SUIT 16 OF 2020
CK NZILI, J
OCTOBER 5, 2022**

BETWEEN

ZABLON MURUNGI M'RINGERA PLAINTIFF

AND

THE PUBLIC TRUSTEE MERU COUNTY 1ST RESPONDENT

**THE COUNTY LAND ADJUDICATION AND SETTLEMENT OFFICER MERU
COUNTY 2ND RESPONDENT**

**THE COUNTY LAND ADJUDICATION AND SETTLEMENT SURVEYOR
MERU COUNTY 3RD RESPONDENT**

THE LAND REGISTRAR MERU COUNTY 4TH RESPONDENT

**THE DIRECTOR OF LAND ADJUDICATION & SETTLEMENT ... 5TH
RESPONDENT**

THE CHIEF LAND REGISTRAR 6TH RESPONDENT

THE HONOURABLE ATTORNEY GENERAL 7TH RESPONDENT

AND

ASENATH KAIMURI NYAMU APPLICANT

RULING

1. The court by an application dated March 23, 2022 is asked to allow the 1st defendant now deceased to be substituted with Asenath Kaimuri Nyamu his legal representative for the estate who has acquired a limited grant *ad litem* since the cause of action survives the death of the deceased party.



2. The application is supported by an affidavit sworn by the proposed party on March 23, 2022 where he has annexed a copy of the death certificate and the limited grant *ad litem* as annexure marked AKM “1” & “2” respectively.
3. The application is opposed by the plaintiff through an affidavit sworn on May 3, 2022. The reasons given are that at the time the grant was issued material facts were not disclosed to the probate court. That to avoid the suit from abating, citation proceedings were taken on October 12, 2021 against Vionecia Gathure, Joseph Mworira Nyamu and Nathan Kirianki to accept or refuse the letters of administration in default of which, the Public Trustee was appointed as the 1st defendant in the amended plaint hence the application is not only late, an afterthought, delaying tactic but also inconsequential until there is a replacement of the Public Trustee as per the *Law of Succession Act*.
4. On the part of the 2nd – 7th defendants through Mr Kieti litigation counsel submitted that they were not opposed to the application before the court.
5. The applicant submitted under order 24 rule 1 of the *Civil Procedure Rules* where a suit survives the death, substitution can be allowed.
6. It is submitted that the 1st defendant passed on March 3, 2021 and due to lack of proper instructions, a citation was made by the plaintiff on October 25, 2021 and that timelines was given to substitute out of which the plaintiff was on January 27, 2022 given the option to take any remedial action within 14 days.
7. The intended party has submitted there was no intentional delay except financial difficulties by the family of the deceased. Reliance was placed on *Silas Njeru & 2 others v Mugo Mugere & 2 others* ELC 220 of 2014 citing with approval *Abdirahman Abdi v Safi Petroleum Products Ltd & 6 others* [2011] eKLR on the proposition that a court should not place undue regard to technicalities as to result to miscarriage of justice. Further it was submitted that since the proposed party was better placed unlike the Public Trustee to represent the deceased estate.
8. The applicant submitted based on the *Hon Attorney General v LSK & another* Civil Appeal No 133 of 2011, she had given sufficient cause in law that is to say rational, plausible convincing, reasonable and truthful explanation for the delay. Concerning the Public Trustee, it was submitted that it lacked a clear background of the suit to adjudicate or represent the estate of the deceased.
9. Further the applicant submitted that despite the extension of time, the plaintiff rushed to obtain the grant on December 6, 2021 without informing first the deceased’s family hence the extension of time on January 27, 2022 automatically disqualified the grant to the Public Trustee to represent the estate.
10. The applicant seeks to substitute the 1st defendant now said to be deceased when already such a replacement has been done by a body clothed with authority by a court of competent jurisdiction following a High Court citation Case No 42 of 2021 against the wife and the sons of the deceased, which was duly served upon the said parties on October 28, 2021 and a return of service fully filed on November 8, 2021.
11. Following the non-compliance, the Public Trustee was appointed under section 5 of Public Trustee cap 168 to defend the suit on behalf of the deceased’s estate.
12. The record indicates that on April 21, 2021, the court was told that the 1st defendant had passed on March 3, 2021. Mr Atheru indicated there will be substitution. The court gave time for substitution to July 20, 2021.



13. On July 28, 2021 Mr Atheru advocate told the court that he had no instructions for the substitution and that the plaintiff could proceed with the matter. The court gave time for the plaintiff to take appropriate steps over the substitution.
14. On November 16, 2021, the court was told that citation proceedings had been initiated by the plaintiff. Miss Githinji advocate told the court that succession proceedings had been initiated by the family of the deceased 1st defendant and requested for 45 more days to comply with the court orders request was allowed.
15. On January 27, 2022, the court was told that the Public Trustee had filed some papers on behalf of the 1st defendant and was looking for the beneficiaries of the estate of the deceased. Miss Githinji sought for 14 more days to apply for the substitute claiming she had misdiarized the matter. This request was opposed by the plaintiff.
16. The court directed that the plaint be amended with 30 days thereafter the defendants to file and serve their amended defences. A mention date for April 5, 2022 was issued to confirm compliance.
17. There is no indication if the plaintiff ever filed an amended plant and served one in compliance with the order since the one in the court file is not stamped and or accompanied by a verifying affidavit with effect from the date of the order.
18. The limited grant *ad litem* issued to the Public Trustee is dated December 6, 2021 and was issued by the High Court whereas the one by the applicant herein is dated March 23, 2022 and issued by the Chief Magistrate Meru law courts.
19. From the record, Mr Atheru advocate for the applicant knew as at January 27, 2022 that the Public Trustee was already appointed to represent the 1st defendant's estate. Counsel had already said he lacked instructions to proceed with substitution and urged the court to order the plaintiff to proceed in whatever manner it pleased the court.
20. Counsel cannot therefore turn around and lay blame on the plaintiff. Counsel also knew the suit was about to abate as against his client the 1st defendant.
21. Similarly, counsel knew that the Public Trustee has already become a party to the suit but instead made the application as if the 1st defendant has not been replaced and when there also in existence a bonafide 1st defendant the Public Trustee duly appointed by the High Court prior to the limited grant issued by the lower court, following citation which was served against the immediate family of the deceased, the wife and the children.
22. There is no evidence that the applicant has sought for and obtained, the consent of the three immediate family members to represent their interests and the estate apart from the Public Trustee.
23. The applicant did not see it necessary to apply for the replacement, revocation or the setting aside of the grant issued by the High Court under section 76 of the [Law of Succession Act](#) cap 160 laws of Kenya.
24. This court cannot sit as a probate court for it is not possessed with the power to determine who among the two is better suited to represent the estate of the deceased. See in the [Estate of Harrison Mramba Thoya](#) (deceased) [2020] eKLR, [In The Matter of Grace Wanjira Kamakia v Public Trustee](#) [2013] eKLR.
25. The circumstances under which the Public Trustee came on board were within the knowledge of the family of the deceased. In absence of any objection from the immediate family and or perhaps a revoked



grant issued by High Court, the court finds no harm in the Public Trustee continuing with the matter. See *In Re-estate of Mohammed Bilhali (Deceased)* [2020] eKLR.

26. The said family members are at liberty to be witnesses in the suit so that the Public Trustee so that their rights.
27. In the premises I find the application lacking merits. The same is dismissed with costs.
Orders accordingly.

DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT THIS 5TH DAY OF OCTOBER, 2022

In presence of:

C/A: Kananu

Ochwada for plaintiff/Respondent

Mr Atheru for applicant

Mr Kieti for 2nd – 4th Defendant

HON CK NZILI

ELC JUDGE

