



Wanguhu & Wanguhu (Suing as administrators for and on behalf of the Estate of Fridah Wairimu Wanguhu) v Wangui (Environment & Land Case E20 of 2021) [2022] KEELC 13295 (KLR) (6 October 2022) (Ruling)

Neutral citation: [2022] KEELC 13295 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT & LAND CASE E20 OF 2021
LA OMOLLO, J
OCTOBER 6, 2022**

BETWEEN

**ALEX MWAURA WANGUHU & WILFRED MANYARA
WANGUHU PLAINTIFF**

**SUING AS ADMINISTRATORS FOR AND ON BEHALF OF THE ESTATE OF
FRIDAH WAIRIMU WANGUHU**

AND

RUTH MARY WANGUI DEFENDANT

RULING

Introduction

1. This ruling is in respect of the plaintiff/applicant's notice of motion application dated March 10, 2022 which is expressed to be brought under order 24 rule 1, 2, order 31 rules 1 & 2, order 51 rule 1 of the [*Civil Procedure Rules*](#).
2. The application seeks the following orders:
 - a. The name of Wilfred Manyara Wanguhu be substituted with Anthony Michael Kinuthia and Tony Kiarie Kaime in the pleadings in this suit.
 - b. The costs be in the cause
3. The application is based on the grounds on its face and supported by the affidavit sworn on March 10, 2022 by one of the plaintiffs- Alex Mwaura Wanguhu.



Factual Background.

4. The plaintiffs commenced this suit *vide* a plaint dated February 17, 2021 where the plaintiffs pray for judgement against the defendant/respondent for:
 - a. An injunction restraining the defendant by herself, her servants, agents or any other person claiming through her from selling or offering for sale, leasing out, or in any way alienating the suit property known as land reference number 6295/1/12.
 - b. An order for the defendant to transfer the suit property known as land reference number 6295/1/12 back to the estate of the late Frida Wairimu Wanguhu.
 - c. In the alternative the registrar of government lands be ordered to cancel the entries transferring the suit property to the defendant and the same to revert back to the estate of the late Frida Wairimu Wanguhu.
 - d. Costs
 - e. Any other relief the court deems fit to grant.
5. The defendant entered appearance and filed her statement of defence dated October 28, 2021 on November 2, 2021 where she denied the allegations in the plaint and sought that the plaintiff's suit be dismissed with costs.
6. The matter came up for hearing on March 8, 2022 when counsel for the plaintiffs informed the court that one of the plaintiffs Wilfred Manyara Wanguhu is deceased.
7. The removal of Wilfred Manyara Wanguhu as an administrator of the estate of Fridah Wairimu Wanguhu and his subsequent demise necessitated the filing of this application.

The Plaintiff/applicant's Contention.

8. The plaintiff/applicant contends that he is an administrator of the estate of Fridah Wairimu Wanguhu and that he had filed the present suit with his brother Wilfred Manyara Wanguhu now deceased.
9. The plaintiff/applicant further contends that it is his understanding that as administrators they are obligated to act in the best interest of the estate as they could be called to render accounts.
10. The plaintiff/applicant also contends that after the suit was filed he was shocked to learn that his brother Wilfred Manyara Wanguhu had teamed up with Ruth Mary Wangui who is the defendant herein to sell the suit property.
11. It is his contention that that the family held a meeting where it resolved that it was in the best interest of the estate that Wilfred Manyara Wanguhu be removed as an administrator and he be replaced with Antony Michael Kinuthia.
12. It was also his contention that it was further resolved that Tony Kiarie Kaime would replace his father Peter David Kaime who was also one of the administrators and had passed away in October, 2020.
13. The plaintiff/applicant contends that the application dated June 21, 2021 was filed in order to effect the changes and that he was informed by his advocates on record that the application was duly served upon Wilfred Manyara Wanguhu.



14. The plaintiff/applicant further contends that upon service, wilfred chose not to oppose the application to remove him as an administrator and unfortunately passed away on November 4, 2021 after the matter had been set for hearing on November 8, 2021.
15. He also contends that the application was heard by Honorable Lady Justice Matheka and orders granted on November 8, 2021.
16. The plaintiff/Applicant Further contends that Wilfred Manyara Wanguhu having passed away and in view of the fact that he has been substituted as an administrator in the estate of Fridah Wanguhu, it is not possible to have him continue as a plaintiff in this matter.
17. The plaintiff/applicant contends that they met as a family and agreed that they should move together as one in order to safeguard the estate from the danger posed by those who are intent on disposing it thereby disinheriting all other beneficiaries.
18. The plaintiff/applicant further contends that it is against this background that he was shocked to hear that counsel for the late Wilfred Manyara Wanguhu state in court on March 8, 2022 that he had obtained a letter from the chief to petition for a grant of letters of administration.
19. The plaintiff/applicant also contends that the court should take note of the fact that the widow of the late Wilfred Manyara Wanguhu had also recorded a statement in this matter distancing herself from the actions of her late husband and is a witness for the plaintiffs begging the question on whose behalf counsel is acting and, on whose instructions, he obtained the said letter.
20. He ends his deposition by praying that the application to substitute Wilfred Manyara as one of the plaintiffs with Anthony Michael Kinuthia and Tony Kiarie Kaime be allowed.

Defendant/Respondent's Response.

21. The defendant/respondent filed a replying affidavit sworn on March 16, 2022 and filed on March 21, 2022.
22. She contends that this application is most unfortunate and a pure abuse of the due process of the law and should be dismissed forthwith.
23. She further contends that the application is a non-starter for it is premised on an incurably defective suit and that from the onset when this suit was filed no consent from her deceased brother Wilfred Manyara was obtained and that is why he disputed the same.
24. She also contends that the court record does not in any way bear or have a consent by the said Wilfred Manyara and as such the application for substitution cannot stand nor has it crystallized by virtue of lack of initial consent prior to filing.
25. The defendant/respondent contends that she has been advised by her advocates on record that the suit expressly violates the provisions of section 79 of the *Law of Succession Act* and a preliminary point of law was raised and a notice issued as per paragraph 4 and 15 of the statement of defence.
26. The defendant/respondent further contends that she is surprised to see the affidavit of Victor Wanguhu her nephew having sworn an affidavit at Nakuru on the March 8, 2021 yet during that time the father was still alive.
27. The defendant/respondent also contends that the alleged affidavit of Edward Githomi allegedly sworn on the March 8, 2021 is equally strange to her.



28. She contends that the two affidavits are suspect and purely aimed at misleading the court and as their aunty she believes that the said Victor and Edward did not swear the same at a commissioner for oaths at Nakuru for they are based in the USA and Bungoma respectively.
29. She further contends that due to the foregoing she appeals to the court to take the pleadings by the applicant with a pinch of salt and that Victor had indicated to her that from the date he buried his father Wilfred he has never stepped a foot in the country and so she wonders who swore the affidavit on his behalf.
30. She ends her deposition by stating that it is clear that the said application must fail.
31. Upon service of the replying affidavit of the defendant/respondent, Victor Manyara Wanguhu filed a further affidavit sworn on April 29, 2022 and filed on May 6, 2022.
32. He contends that upon the demise of his father he travelled to Kenya to attend the funeral in November, 2021 and that when he was in Kenya he signed the affidavit which is being contested by his aunt Ruth Mary Wangui who is the defendant.
33. He contended that the date which was inserted in the affidavit may be erroneous but he confirms that the signature is his and that he signed the affidavit in November, 2021 when he was in Kenya.

Issues For Determination.

34. The plaintiff/applicant filed his submissions dated on May 6, 2022 while the defendant/respondent did not file any submissions.
35. The plaintiff/applicant in his submissions identified one issue for determination;

Whether The Court Should Grant Orders For Substitution.

36. The plaintiff/applicant submitted that the family division of the court had issued grants of administration to the plaintiffs herein to administer the estate of the late Fridah Wairimu Wanguhu but one of the administrators Wilfred Manyara Wanguhu passed on November 4, 2021.
37. The plaintiff/applicant further submitted that even before Wilfred Manyara Wanguhu had died an application had been brought to court to substitute him as one of the administrators.
38. The plaintiff/applicant also submitted that upon hearing of the application in Nakuru succession cause No 768 of 2012 the court on November 8, 2021 issued letters of grant of administration to Alex Mwaura Wanguhu, Antony Michael Kinuthia and Tony Kiarie Kaime. The plaintiff/applicant relied on the case of *re Estate of Tirus Kamanda (deceased)* [2018] eKLR.
39. The plaintiff/applicant pointed out that the defendant/respondent had indicated that no consent was sought from the late Wilfred Manyara to have the suit instituted and submitted that the court would not issue grant of letters of administration where a beneficiary of the estate of the deceased is not agreeable.
40. The plaintiff/applicant further submits that the deceased Wilfred Manyara never complained to court that he wished not to be an administrator of the estate of the late Fridah Wairimu Wanguhu.
41. The plaintiff/applicant also submits that the defendant/respondent in her replying affidavit indicated that Victor Manyara Wanguhu swore the affidavit when the father was still alive. Plaintiff/applicant went on to submit that in the further affidavit sworn by Victor Manyara, he stated that he swore the



affidavit when he travelled back to Kenya in November, 2021 to attend the burial of his father admitting that though the affidavit might have a wrong date, the signature on it is his.

42. The plaintiff/applicant concluded his submissions by stating that the respondent has not shown the court how she will be prejudiced if the honorable court proceeds and issues the substitution orders sought.
43. The plaintiff/applicant states that it is in the interest of justice that the court allows Wilfred Manyara Wanguhu to be substituted with Anthony Kinuthia and Tony Kiarie Kaime.
44. It is my considered view that the only issue that arises for determination is;
Whether Wilfred Manyara Wanguhu should be substituted with Anthony Michael Kinuthia and Tony Kiarie Kaime as plaintiffs in this suit.

Analysis And Determination.

45. I have taken into consideration the application, the supporting affidavit, the further affidavit and the submissions filed by the plaintiff/applicant.
46. The law relating to substitution is found in order 24 rule 3(1) of the *Civil Procedure Rules*. It provides as follows:

Where one of two or more plaintiffs dies and the cause of action does not survive or continue to the surviving plaintiff or plaintiffs alone, or a sole plaintiff or sole surviving plaintiff dies and the cause of action survives or continues, the court, on an application made in that behalf, shall cause the legal representative of the deceased plaintiff to be made a party and shall proceed with the suit.

47. In the present application, the plaintiff/applicant is seeking for Wilfred Manyara Wanguhu (deceased) to be substituted with Antony Michael Kinuthia and Tony Kiarie Kaime.
48. This is grounded on the fact that Wilfred Manyara Wanguhu's name was removed as one of the administrators of the estate of the late Fridah Wairimu Wanguhu.
49. The defendant/respondent in response to the application alleges that when the suit was filed, no consent from Wilfred Manyara was obtained.
50. The defendant/respondent further alleges that the affidavit said to be sworn by Victor Wanguhu in Nakuru on March 8, 2021 was done when the father was still alive and that he is based in the USA while the affidavit sworn by Edward Githomi on March 8, 2021 is strange to her as he is based in Bungoma.
51. In response to the allegations raised by the defendant/respondent in her replying affidavit, Victor Wanguhu in his further affidavit stated that upon the demise of his father, he travelled to Kenya in November, 2021 when he signed the affidavit contested by the defendant/respondent.
52. He also admitted that the date inserted in the affidavit was erroneous but confirmed that the signature belonged to him.
53. Upon perusal of the court record, the affidavit sworn by Victor Wanguhu on March 8, 2021 that is contested by the defendant/respondent was filed in response to the affidavit sworn by Wilfred Manyara Wanguhu (deceased). The same is not under consideration and hence immaterial.
54. From the material placed on record, it is not disputed that one of the plaintiffs Wilfred Manyara Wanguhu passed away on November 4, 2021.



55. It is also not disputed that prior to his death, an application had been filed in Nakuru succession case number 768 of 2012 to have his name removed as one of the administrators of the estate of Fridah Wairimu Wanguhu which application was allowed on November 8, 2022.
56. Annexed to the plaintiff/applicant's application is a copy of the rectified grant of letters of administration intestate of the estate of the late Fridah Wairimu Wanguhu which was granted to Alex Mwaura Wanguhu the plaintiff/applicant herein together with Antony Michael Kinuthia and Tony Kiarie Kaime.

Disposition.

57. Based on the foregoing and owing to the fact that no compelling reasons have been advanced by the defendant/respondent in opposition to the application for substitution, the application dated March 10, 2022 is allowed in the following terms;
- a. The name of Wilfred Manyara Wanguhu be and is hereby substituted with Anthony Michael Kinuthia and Tony Kiarie Kaime as plaintiffs in this suit.
 - b. The costs of this application shall abide the outcome of the main suit

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAKURU THIS 6TH DAY OF OCTOBER,

2022.

L. A. OMOLLO

JUDGE

In the presence of: -

Mr. Osiemo for the Plaintiff/Applicant.

Mr. Wambeyi for the Respondent.

Court Assistant; Miss Monica Wanjohi.

