

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

ELC NO. E003 OF 2021

TIMES U SACCO SOCIETY LIMITED.....PLAINTIFF

VERSUS

NURU KITHINJI IGWETA1ST DEFENDANT

LUDIA KAINDA.....2ND DEFENDANT

M'NABEA M'IMANYARA (sued as the personal

representative of the estate of THUIRUAINI MWITARI

alias THIRWAINI MWITARI.....3RD DEFENDANT

RULING

1. Before me is a Notice Motion dated 23/02/2021 brought pursuant to Order 51 Rule 1, Order 1 Rule 9 and 10 of the Civil Procedure Rules 2010, Article 159 of the Constitution of Kenya, and Section 13, 18 and 19 of the Environmental and Land Court. The applicant is seeking orders to substitute the 3rd defendant herein M'NABEA M'IMANYARA erroneously sued as the personal representative of THUIRUAINI MWITARI alias THIRWAINI MWITARI with PAULINE NKURUGUCHU M'TWAMWARI and LUDIA KAINDA. The applicant also prays that forthwith, the 3rd defendant represented by his personal representative CHARITY J. M'NABEA be deemed duly withdrawn from the suit.

2. The Application is based on the grounds on the face of it and on the Supporting Affidavit of Joel Mutuma, Advocate for the applicants. He avers that it is prudent that the application be allowed and the suit be withdrawn against the 3rd defendant with no costs.

3. The 3rd defendant filed a replying affidavit dated 1/03/2021, averring that she was not opposing the application, but she prays for costs.

4. I have carefully perused the application and in the interest of justice the application dated 23/02/2021 ought to be allowed. On costs, I have taken into consideration that it was the plaintiff's mistake to sue the 3rd defendant as admitted in paragraph 2 of the supporting affidavit, but this admission has been done at an early stage. I therefore condemn the plaintiff to pay half costs to the 3rd defendant.

DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS AT MERU THIS 26TH DAY OF MAY, 2021 IN PRESENCE OF:

C/A: Kananu

Mutuma Joel for plaintiff

Muriira for 3rd defendant

HON. LUCY. N. MBUGUA

ELC JUDGE