



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET

E & L CASE NO. 53 OF 2016 (OS)

PAULINE JEPKORIR (Suing in her capacity as the

Legal Representative and Administratrix of the Estate of

GEOFFREY KIPLAGAT MASWAI (Deceased).....1ST APPLICANT

PAULINE JEPKORIR.....2ND APPLICANT

VERSUS

ERNEST KIPROP ARAP KOGO.....RESPONDENT

RULING

1. **Pauline Jepkorir**, the Applicant, moved the Court vide the Motion dated the 9th December, 2019 seeking to be substituted for **Geoffrey Kiplagat Maswai**, the deceased Plaintiff, and to be granted leave to be a party in the suit in her own right and for the annexed amended originating summons to be deemed duly filed and served subject to payment of court fees. The application is based on the twelve (12) grounds on its face and supported by the affidavit sworn by the said **Pauline Jepkorir** on the 9th December, 2019. That it is the Applicant's case that she is a widow of the late Geoffrey Kiplagat Maswai, the Plaintiff, who died on the 2nd March, 2019. That she buried the deceased Plaintiff on the suit land and obtained Grant of Letters of Administration Ad Litem on the 23rd September, 2019. That as the claim in the suit survived the death of her late husband, she seeks to be allowed to substitute him as the Plaintiff and also be enjoined in her personal capacity.

2. That the affidavit by **Ernest Kiprop Kogo**, the Respondent, sworn and filed on the 18th February, 2020 and served on the 19th February, 2020 when the application was coming up for hearing was struck out upon application by Counsel for the Applicant. The learned Counsel for the Respondent was however, allowed to participate in the hearing of the application submitting only on matters of law.

3. The learned Counsel for the Applicant and Respondent made their oral submissions for and against the application and the following are the issues for the Court's determinations.

(a) Whether the Applicant has made a reasonable case to be allowed to substitute the deceased Plaintiff and to be enjoined as a party.

(b) Who pays the costs of the application?

4. The Court has considered the grounds on the Motion, the Applicant's affidavit evidence, the oral submissions by Learned Counsel for both parties and come to the following findings;

(a) That from the uncontroverted affidavit evidence by the Applicant, and the annexed certificate of death No. 0297414 issued on the 22nd May 2019, Geoffrey Kiplagat Maswai passed on the 2nd March, 2019. That the said deceased was the Plaintiff/Applicant in this suit having commenced it though the originating summons dated and filed on the 16th March, 2016. That by the 9th December, 2019 when this application was filed, the suit was still subsisting as under **Order 24 Rule 3(2) of Civil Procedure Rules** it could only have abated after the lapse of one year without application to substitute being filed. That the one year from 2nd March, 2019 which is the deceased's Plaintiff's date of death ends on or about 2nd March, 2020.

(b) That the Applicant applied for and obtained Grant of Letters of Administration Ad Litem on the 23rd September, 2019 in **Eldoret High Court Ad Litem Cause No. 114 of 2019** as evinced by the attached copy of the Grant. The Applicant therefore has capacity to take over the suit on behalf of the estate of the late Geoffrey Kiplagat Maswai.

(c) That the Applicant has already testified in the suit in support of the late deceased Plaintiff as PW2. That fact does not create any conflict of interest with her desire to substitute the late Geoffrey Kiplagat Maswai as Plaintiff.

(d) That the Applicant has also expressed her desire to be enjoined as a party in her own right for reasons that she **“also have legally recognized interests/rights in the suit land”**. That having considered the contents of the originating summons filed by the late Geoffrey Kiplagat Maswai, and the annexed Amended Originating Summons, the Court is of the view that to allow the Applicant to be enjoined in her personal capacity or right will change the character of the suit completely. That in any case, the Applicant knew of the nature and existence of the suit when the late Geoffrey Kiplagat Maswai was alive but never moved the Court to be enjoined. That instead, she was satisfied being a witness [PW2] at that time. That the Court finds the Applicant has not presented reasonable basis for her joinder in the suit in her individual or personal capacity.

(d) That as the application was necessitated by the death of the original Plaintiff/Applicant, the costs of the application be in the cause.

4. That flowing from the foregoing, the Court allows the Motion dated the 9th December, 2019 in the following terms;

(a) That Pauline Jepkorir, the Applicant, be and is hereby substituted for Geoffrey Kiplagat Maswai, deceased, in her capacity as the legal representative and administratrix of the deceased's estate.

(b) That the Applicant do file and serve an Amended Originating Summons reflecting the said substitution in twenty-one (21) days.

(c) The costs of the application be in the cause.

Orders accordingly.

Dated and delivered at Eldoret this 7th day of May, 2020.

S. M. KIBUNJA

JUDGE

Ruling read in the absence of all the Parties/Counsel and is to be transmitted digitally by the Deputy Registrar through the online media given by Counsel/Parties.

Christine: Court Assistant