



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT MILIMANI**

**ELC CASE NO. 1028 OF 2016**

**NASHON K OMWENGA.....PROPOSED PLAINTIFF**

**VERSUS**

**JOSEPH K NGIRIA.....1<sup>ST</sup> DEFENDANT**

**ESTATE OF JASON ATINDA OUKO(DECEASED).....2<sup>ND</sup> DEFENDANT**

**RULING**

1. The suit herein was filed on 25<sup>th</sup> August 2016 by Marcella Omwenga (Deceased). The deceased died on 28<sup>th</sup> December 2020. On 15<sup>th</sup> April 2021, Nahson Kebwaro Omwenga who was husband to the deceased filed an application in which he seeks to be allowed to substitute the deceased as Plaintiff. He also sought injunctive orders against the 2<sup>nd</sup> Respondent.
2. Before the application could be heard, the 2<sup>nd</sup> Defendant /Respondent filed a preliminary objection on the ground that the Applicant has no locus standi to substitute the deceased before getting letters of administration. The 2<sup>nd</sup> Respondent contends that this case was filed by the deceased and that there is no way the Applicant can be brought in as a Plaintiff in place of the deceased without the Applicant first obtaining letters of administration in respect of the estate of the deceased.
3. The 2<sup>nd</sup> Respondent further argues that the Applicant had filed his own case that is ELC No. 416 of 2018 over the same suit property.
4. The Applicant opposed the 2<sup>nd</sup> Respondent's preliminary objection on the ground that the Applicant is a co-owner of the suit property which was transferred to him jointly with the deceased and that he therefore does not require letters of administration in order to be substituted as the Plaintiff.
5. I have considered the preliminary objection by the 2<sup>nd</sup> Respondent and the opposition to the same by the Applicant. There is no doubt that this suit was filed by the deceased. This being the case, there is no way anyone can take it over unless it is through succession process. Even if the Applicant's name was indicated in the transfer, this does not automatically mean that he can be substituted in place of the deceased. The Applicant has his own case under ELC 416 of 2018. If he wishes to take over this one, he has to get letters of administration in respect of the estate of the deceased. I therefore uphold the preliminary objection by the 2<sup>nd</sup> Respondent and proceed to strike out the Notice of Motion dated 15<sup>th</sup> April 2021 with costs to the 2<sup>nd</sup> Respondent.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 10<sup>TH</sup> DAY OF JUNE 2021.**

**E.O.OBAGA**

**JUDGE**

In the Virtual presence of:-

Mr Gaturu for 1<sup>st</sup> Defendant and for Mr Achoki for Plaintiff

Mr Onyango for 2<sup>nd</sup> Defendant

Court Assistant: Okumu

**E. O. OBAGA**

**JUDGE**