

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KAJIADO

ELC MISCELLANEOUS APPLICATION NO. 87 OF 2019

TONKEI OLE MAPI.....APPLICANT(DECEASED)

VERSUS

LAND REGISTRAR, KAJIADO NORTH.....1ST RESPONDENT

EDWARD NDICHU WANGONGU.....2ND RESPONDENT

AND

GIDEON SAILEPU MAPI.....APPLICANT

RULING

What is before Court for determination is the Applicant's Chamber Summons application dated the 26th February, 2021 where he seeks the following orders:

1. That the Honourable Court be pleased to substitute the name of the deceased Plaintiff herein who died on 21st November, 2020 with the following name GIDEON SAILEPU MAPI.
2. That costs of this application be provided for.

The application is premised on the grounds on the face of it and the supporting affidavit of GIDEON SAILEPU MAPI where he confirms being the brother to the deceased who passed away on 21st November, 2020. He explains that before his demise, the deceased had a case pending in court which he intends to take up and prosecute. Further, pending the issuance of a Full Grant, he was issued with a special Limited Grant allowing him to file and defend suits including to prosecute the aforementioned matter on behalf of the deceased. He reiterates that the Respondents shall not be prejudiced with the orders sought.

The 2nd Respondent opposed the application and filed a replying affidavit sworn by EDWARD WANGONGU NDICHU where he confirms that the Applicant sought for Orders to substitute the name of the deceased Applicant herein who died on 21st November, 2020 with himself. He contends that the Order obtained by the Applicant was limited to filing suit only and did not extend to prosecution of this Miscellaneous Application No. 87 of 2019 as he prayed for in the application Succession Misc / E006/2021 dated 16th February, 2021. He insists the Orders granted on 15th February, 2021 were allegedly obtained for an application dated 16th February, 2021 which was filed on 18th February, 2021 bringing the question of validity of the Orders so obtained. He claims he will be extremely prejudiced by this unwarranted orders.

Upon consideration of the instant application, the only issue for determination is whether GIDEON SAILEPU MAPI should be substituted in place of TONKEI OLE MAPI. I wish to make reference to Order 1 Rule 10 and 14 of the Civil Procedure Rules that makes provisions for substitution of parties. I note the Applicant has acquired a Grant Ad Litem to represent the estate of the late TONKEI OLE MAPI from Ngong Senior Principal Magistrate's Court which Grant was annexed to the instant application as well as the 2nd Respondent's Replying affidavit. I note the 2nd Respondent opposed this application and claimed he would suffer prejudice as the Application for issuance of said Grant Ad Litem contained mistakes on the dates. Further, that the Grant Ad Litem was limited to filing a suit only and did not extend to prosecution of this Miscellaneous Application No. 87 of 2019. He however did not explain what other prejudice he stood to suffer if the said GIDEON SAILEPU MAPI substituted TONKEI OLE MAPI (deceased). At this juncture, I opine that this application is only dealing with the issue of substitution and not the validity of the Grant Ad Litem to be used in prosecuting this Miscellaneous Cause. To my mind, the 2nd Respondent shall suffer no prejudice if the deceased is substituted. Further, Article 159 (2) (d) of the Constitution requires the Court to deal with substantive justice and not procedural technicality which the 2nd Respondent seeks rely on.

Based on my analysis above including the legal provisions I have cited, while noting that the 2nd Respondent has not demonstrated the prejudice he stands to suffer, I will proceed to allow the instant application and direct that **GIDEON SAILEPU MAPI** be substituted with the estate of the late **TONKEI OLE MAPI**.

It is against the foregoing that I find the application dated the 26th February, 2021 merited and will allow it.

Costs will be in the cause.

DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 29TH DAY OF JULY, 2021.

CHRISTINE OCHIENG

JUDGE