



Mliwa (Deceased) v Chepkwony; Mliwa (Proposed Plaintiff) (Civil Case 22 of 2011) [2024] KEHC 1607 (KLR) (20 February 2024) (Ruling)

Neutral citation: [2024] KEHC 1607 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
CIVIL CASE 22 OF 2011
SM MOHOCHI, J
FEBRUARY 20, 2024**

BETWEEN

PAUL HEZRON MLIWA (DECEASED) PLAINTIFF

AND

ELIZABETH CHEROTICH CHEPKWONY DEFENDANT

AND

ZILLA KIRA MLIWA PROPOSED PLAINTIFF

RULING

1. By Notice of Motion dated 12th April 2022 filed under Section 1A and 3A of the *Civil Procedure Act*, Cap 21 Laws of Kenya, order 9 rule 9 order 24, rule 3, & order 51 rule 1 of the *Civil Procedure Rules*, 2010, supported by the sworn Affidavit of Zilla Kira Mliwa, the Applicant moved this Court seeking:
 - a. That, this Honorable Court be pleased to grant its leave for the firm of Willy Maina & Co. Advocates to come on record for the proposed plaintiff.
 - b. That having issued order No. 1 this honorable Court be pleased to issue orders that Zilla Kira Mliwa be substituted in this matter in place of the Plaintiff, Paul Hezron.
2. The Application is based on the following eleven (11) grounds;
 - a. That, the matter herein relates to the decree of the Court that was issued on 4th September 2012 in favour of the Plaintiff.
 - b. That, the proposed Plaintiff herein was the spouse of the deceased and is now the administrator of the estate of the deceased having filed a petition for grant of letters of administration via Nakuru High Court Succession Cause 47 of 2019.



- c. That, the Grant of letters of Administration Intestate were issued to the Proposed Plaintiff on 18th December, 2019.
 - d. That, subsequently the said matter was indeed announced via publication upon the Kenya gazette dated 10th January 2020.
 - e. That, the same was confirmed on by this Honourable Court vide a certificate of confirmation of grant issued by Hon (Prof) Joel M. Ngugi and dated 22nd March, 2021 bequeathing the estate of the deceased to the Proposed Plaintiff.
 - f. That, indeed the fruits of the Judgement of this Court do form part of estate of the deceased but sadly said decree is yet to be executed as the Judgement debtor herein has refused to execute the necessary transfers in compliance with the judgement and decree of this august.
 - g. That, this Court has been requested by former counsel for the Plaintiff to effect said decree vide the Deputy Registrar of this Honourable Court do execute said transfer documents for the same to be transmitted to the beneficiaries of the deceased.
 - h. That, the cause of action herein survives the Plaintiff (Deceased).
 - i. That, the matter herein can only be conclusively and adequately determined when the parties are represented and they realise the fruits of the Judgement of the Court.
 - j. That, no prejudice will be suffered by the litigants herein or other beneficiaries of the estate.
 - k. That, it is only mete and just that the application herein be allowed.
3. The Applicant depones that, the matter herein relates to the decree of the Court that was issued on 4th September 2012 in favour of the Plaintiff:
- l. That, the Applicant was the spouse of the Plaintiff who is deceased and she is now the administrator of the estate of the deceased having filed a petition for grant of letters of administration via Nakuru High Court Succession Cause 47 of 2019.
4. That, the Grant of letters of Administration Intestate were issued to her on 18th December 2019 and the same was confirmed on 22nd March 2021 bequeathing the estate of the deceased to the Proposed Plaintiff. Certificate of Confirmation of Grant.
5. That, the fruits of the Judgement of this Court do form part of estate of the deceased but sadly said decree is yet to be executed as the Judgement-debtor has failed and/or refused to execute the necessary transfers in compliance with the judgement and decree of this August Court.
6. This Court has been requested by former counsel for the Plaintiff to effect said decree vide the Deputy Registrar of this Honourable Court do execute said transfer documents for the same to be transmitted to the beneficiaries of the deceased.
7. That, the cause of action survives the Plaintiff (Deceased) and can only be conclusively and adequately determined when the parties are represented and they realize the fruits of the Judgement of the Court.
8. That no prejudice will be occasioned to any party if the application herein is allowed.
9. Despite repeated service by the Applicant, the Defendant elected not to defend this Application. The Application is thus undefended.
10. In the premises, I do find the Notice of Motion dated 12th April 2022 to be of merit and allow the same on the following terms:



- i. That, leave is hereby granted for the firm of Willy Maina & Co. Advocates to come on record for the proposed plaintiff.
- ii. Zilla Kira Mliwa is hereby substituted in this matter in place of the Plaintiff, Paul Hezron Mliwa
- iii. Costs shall be in the cause.

It is So Ordered

**SIGNED, DATED AND DELIVERED VIRTUALLY AT NAKURU ON THIS 20TH
FEBRUARY 2024**

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Justice Mohochi S.M

Judge

