



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MERU

ELC CASE NO. 201 OF 2012

ROSE GACHERI.....PLAINTIFF

VERSUS

JANE NKIROTE.....DEFENDANT

RULING

1. By a motion **dated 8th February, 2021** the applicant seeks to substitute the defendant **Gideon M'Ikunyua M'Arithi** now deceased with his legal representative **Jane Nkirote** so as to finalize the suit.
2. The second prayer is for an order compelling the intended party once substituted to sign all documents or instruments required for transfer of **Parcel No. L.R Nthimbiri/Igoki/209** as per decree issued by this court on **18th December, 2017**.
3. The motion is supported by an affidavit sworn on **11th February 2021** by the applicant, in which she has attached a copy of the decree and letters of grant ad litem issued by the **Chief Magistrate Meru on 21st May 2019**.
4. As a general rule upon the death of any party to a suit, the suit abates after 12 months from the date of death. **Order 24 rules 3, 4 and 7 of the Civil Procedure Rules** however provide that abatement does not apply to a suit at execution stage. Under **Order 24 rule (4) (1)** allows the court on application to cause the legal representative to be made a party and if not done within a year the suit abates by operation of the law. **Order 24 Rule 10** does not however apply to proceedings in execution of a decree unless of course it is being made after twelve years as provided under **Section 4 of the Limitation of Actions Act, Cap 22 Laws of Kenya**.
5. In ***Agnès Wanjiku Wangondu –vs- Uchumi Supermarkets Ltd (2008) eKLR***, the court held that the requirement for substitution does not apply to proceedings in execution stage and that **Order 31 Rule 1** is clear that it shall not ordinarily be necessary to make an administrator a party for execution to issue against the property vested in them.
6. In ***Mueni Kiamba –vs- Mbathi Kimeu Kimolo (2017) eKLR*** the court held that matters that have reached execution stage should be allowed to proceed without the need for substitution of deceased parties as per overriding objective of the **Civil Procedure Act and Article 159 of the Constitution**. It goes without saying therefore that it is not mandatory to have the substitution of the defendant/judgment debtor herein.
7. The above notwithstanding, it is my considered view the judgment debtor herein cannot execute transfer documents. The decree has to be amended so that the legal representative may execute them for the ends of justice to be met.
8. In any event the grant issued herein was specific to the execution of the decree in the instant case.
9. For the foregoing reasons, I find the application with merit. The same is allowed with no order as to costs.

DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS AT MERU THIS 27TH DAY OF OCTOBER, 2021

In presence of:

MR. RIUNGU FOR APPLICANT – ABSENT

MRS. OTIENO FOR RESPONDENT – PRESENT

COURT ASSISTANT - KANANU

HON. C.K. NZILI

ELC JUDGE