



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT NAIROBI**

**ELC CASE NO. 1116 OF 2015**

**MATEI MULILI JULIUS NDETI & NZIOKI MULILI NDETI(Suing as the administrators**

**of the estate of the late HARRISON MULILI NDETI (Deceased).....1<sup>ST</sup> PLAINTIFF**

**SYOKWIA KIILU NDETI & SOMBA NDETI(Administrators of the Estate of the late**

**JULIUS KIILU NDETI (Deceased).....2<sup>ND</sup> PLAINTIFF**

**GREGORY MUTHEKE NDETI & JOHN NDETI MUTHEKE(Administrators of the**

**Estate of the late MUTHEKE MUTUA NDETI (Deceased).....3<sup>RD</sup> PLAINTIFF**

**URBANUS KIOKO NDETI & BONIFACE NTHIW'A NDETI (Administrators of the**

**Estate of the late ALPHONSE NTHIW'A NDETI (Deceased).....4<sup>TH</sup> PLAINTIFF**

**ALEX KIILU NDETI & ESTHER WAQUO(Administrators of the Estate of the late**

**PATRICK MUTHEKE NDETI (Deceased).....5<sup>TH</sup> DEFENDANT**

**- VERSUS -**

**RAPHAEL MUSYOKI NDETI(Administrators of the Estate of the late PETER**

**NZUKI NDETI (Deceased).....1<sup>ST</sup> DEFENDANT**

**CECILIA SITUMAI NDETI & MICHAEL KYENDE NDETI (Administrators of the**

**Estate of the late PROFESSOR KIVUTO NDETI (Deceased).....2<sup>ND</sup> DEFENDANT**

**RULING**

1. This is the Notice of Motion dated 22<sup>nd</sup> April 2021 brought under order 2 rule 15(1)(b)(c)(d), order 4 rule 1(2) and (3), order 51 rule 1 of the Civil Procedure Rules 2010, section 6 and 7 of the Civil Procedure Act, section 2(1) and (2) of the law of Succession Act, Cap 160 Laws of Kenya.

2. It seeks orders:-

**1. The Plaintiffs Amended Plaintiff dated 15<sup>th</sup> February 2021 be struck out.**

**2. The costs of the suit and this application be awarded to the named 2<sup>nd</sup> Defendant.**

3. The grounds are on the face of the application and are set out in paragraphs (i) to (x).

4. The application is supported by the affidavit of Michael Kyende Ndeti, the 2<sup>nd</sup> Defendant herein sworn on the 22<sup>nd</sup> April 2021.
5. The application is opposed. There is a replying affidavit sworn by Somba Ndeti, one of the Administrators of the estate of the late Julius Kiilu Ndeti, the 2<sup>nd</sup> Plaintiff herein sworn on the 8<sup>th</sup> June 2021.
6. It appears the other Respondents did not file any responses to the application.
7. The court directed that the application be canvassed by way of written submissions.
8. I have considered the notice of motion and the affidavit in support. I have also the replying affidavit, the written submissions filed on behalf of the parties and the authorities cited. The issue for determination is whether this application is merited.
9. It is the 2<sup>nd</sup> Defendant's/Applicants case that the Plaintiffs/Respondents claim is that the named deceased persons jointly acquired properties as Ndeti family or in a partnership or through a limited liability company. That the beneficiaries can only lay claim or seek to enforce the Agreement through the Law of Succession Act.
10. The Plaintiffs/Respondents on the other hand contend that this court is the one with jurisdiction to hear the dispute herein. Further that the subject matter did not arise during the process of administration of the estate of Kivuto Ndeti hence the application of rule 4(3) of the Probate and Administration Rule does not apply in any way on this case.
11. **Section 2 (1)** of the Law of Succession Act, Cap 160 Laws of Kenya provides that:-

**“Except as otherwise expressly provided in this Act or any other written law, the provisions of this Act shall constitute the law of Kenya in respect of, and shall have universal application to, all cases of intestate or testamentary succession to the estates of deceased persons dying after, the commencement of this Act and to the administration of estates of those persons.”**

**Rule 4(3)** of the Probate and Administration Rules provides that:-

**“Where any such notice is received from a district registry the principal registry shall examine all other notices of applications for grants received from the several district registries and all application for grants at the principal registry so far as may be necessary for the purpose of ascertaining whether an application for a grant in respect of the estate of that deceased person has been made in more registries than one, and shall communicate with each district registrar as occasion may require in relation thereto.”**

12. I have considered the rival submissions. It is in the interest of justice that this matter proceeds to full hearing so that the Plaintiffs can ventilate their claims.
13. I find no merit in the application and the same is dismissed with no orders as to costs.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 25<sup>TH</sup> DAY OF NOVEMBER, 2021**

.....

**L. KOMINGOI**

**JUDGE**

**In the presence of:-**

Mr. Muindi for the Plaintiffs

Mr. Mikwa for Mr. Gitonga for the 1<sup>st</sup> Defendant

Ms Ikonge for Mr. Bundotich for the 2<sup>nd</sup> Defendant

Steve - Court Assistant