



**Kangari (Suing as Administrator of the Estate of Joseph Kangari Muhu) v Muhu  
& 2 others; Kangari & another (Interested Parties) (Civil Suit E408 of 2019)  
[2023] KEHC 20005 (KLR) (Commercial and Tax) (14 July 2023) (Ruling)**

Neutral citation: [2023] KEHC 20005 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
CIVIL SUIT E408 OF 2019  
FG MUGAMBI, J  
JULY 14, 2023**

**BETWEEN**

**SARAH WANGARI KANGARI ..... PLAINTIFF  
SUING AS ADMINISTRATOR OF THE ESTATE OF JOSEPH KANGARI MUHU**

**AND**

**SERAH MWERU MUHU ..... 1<sup>ST</sup> DEFENDANT  
J.M KANGARI & J.K MUHU INVESTMENTS ..... 2<sup>ND</sup> DEFENDANT  
VARIANT REALTORS LIMITED ..... 3<sup>RD</sup> DEFENDANT**

**AND**

**JAMES MUHU KANGARI ..... INTERESTED PARTY  
TIMOTHY KAMAU KANGARI ..... INTERESTED PARTY**

**RULING**

**Brief Facts**

1. Before the court is the application dated 14<sup>th</sup> March 2022 brought under sections 3 & 3A of the [Civil Procedure Act](#), CAP 21 Laws of Kenya and Order 8 Rules 3(1) and 5 (1) & Order 51 Rule 1 of the [Civil Procedure Rules](#) 2010 and all other enabling provisions of the law.
2. It seeks the following orders;
  - i. That this Honourable Court be pleased to grant leave to the Defendants to Amend their Statements of Defence.



- ii. That upon granting the leave sought in (1) above, this Honourable Court be pleased to admit the Amended Statements of Defence dated and filed on 1st February 2022 as duly filed.
- iii. That costs of this application be in the cause.
3. The application is premised on the grounds spelt out on the face of it and is supported by an affidavit dated 14<sup>th</sup> March 2023 sworn by Lilian Wakarura Irungu, the defendant/applicant's advocate.
4. The totality of the applicants' case is that there was a typographical error in the statements of defence dated and filed on 25th January 2022 in the date of the death of Wambui Muhu as the same was erroneously indicated as 18<sup>th</sup> June 1983 instead of 18<sup>th</sup> June 1993. The applicant submits that the amendment will occasion no kind of prejudice on the respondent and that it is in the interest of justice and fairness that the application be granted.
5. The applicant points out that the court has the power to allow a party to amend its pleadings at any stage in the proceedings. The amendment sought is for purposes of correcting an error on the record. The death certificate is annexed to the application.
6. The application is opposed through a replying affidavit sworn by Sarah Wangari Kangari, the plaintiff who sues on behalf of the estate of Joseph Kangari Muhu, and who is also the mother of the interested parties herein. The replying affidavit is dated 10<sup>th</sup> May 2022.
7. The respondent argues that the application is an afterthought meant to delay the hearing and determination of the suit, that the application has been brought after inordinate delay and that in any case, the application is fatally defective.

### **Analysis**

8. Parties canvassed the application by way of written submissions dated 6<sup>th</sup> June 2022 and 23<sup>rd</sup> June 2022 filed by the applicant and respondent respectively, which I have carefully considered together with the pleadings and evidence presented by each party.
9. The bone of contention is whether the applicant deserves an opportunity to amend their statement of defence. The applicants have in their bundle of documents attached the death certificate of the late Wambui Mahiu. In any case, the date of death is not controverted. I am also not convinced that there has been any inordinate delay in filing the application or that there will be any prejudice on the respondents if the application is granted. In any case, the amendment is very specific and very limited. No new issues are being introduced. Should the respondent wish to put in further averments with respect to the amendment, they may seek the leave of court to do so.

### **Determination and orders**

10. It is therefore in the interests of justice that this application be allowed so as to determine the true and substantive issues in dispute. The same is allowed but with no orders to costs.

**DATED, SIGNED AND DELIVERED IN NAIROBI THIS 14<sup>th</sup> DAY OF JULY 2023.**

**F. MUGAMBI**

**JUDGE**

Court Assistant: Ms. Lucy Wandiri.

