



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KAJIADO

ELC NO. 690 OF 2017

LAWRENCE NGINYO KARIUKI.....PLAINTIFF

-VERSUS-

- 1. THE ATTORNEY GENERAL**
- 2. CAROLYNE GACHERU THURANIRA (sued as the administrator
of the Estate of the late FRANCIS MURIUKI THURANIRA**
- 3. MOMANYI BOSIRE**
- 4. PRISCILLA WANJIRU NJOROGE**
- 5. KENYA COMMERCIAL BANK LIMITED**
- 6. SAMUEL ECHACHI SHIKUKU**
- 7. AFYA COOPERATIVE SACCO LIMITED**
- 8. KENNEDY IRUNGU MWANGI**
- 9. KEVIN VICTOR BWIRE MUNANA AND MARGARET MUCHISA BWIRE**
- 10. RACHEL WAIRIMU NJOROGE**
- 11. CYPRIAN KANAKE AMBAO**
- 12. STEPHEN WANG'OMBE KINUTHIA**
- 13. PATRICK KIBE KAMAU AND GEORGE MUCHIRI KAMAU**
- 14. SOPHY NDELA KAMATA**
- 15. RISPER KERUBO NYAMETE**
- 16. PETER KINUTHIA GITURA WINNIE WANJIRU KARIUKI**
- 17. EDWARD ELVIS NDIRANGU AND ESTHER WANGARI NDIRANGU**
- 18. DEBORAH OWIRA OTIENO**
- 19. PAUL JAMES OTIENO ODHIAMBO**

20. BARCLAYS BANK OF KENYA LIMITED.....RESPONDENTS

21. JOHN MUCHANGI KARIGI

22. GEORGE ABUOGO OWINO AND EUNICE MEYO ABUOGO

23. SAVINGS & LOAN KENYA LIMITED

24. GEORGE NDEGWA T/A GREEN PLOT PROPERTIES

AND

1. ZADARACK OYARO ACHOKI.....1ST INTERESTED PARTY

2. CLUDFE JOSEPH KAMATA.....2ND INTERESTED PARTY

3. MAXIMUM EKADA MAASE.....3RD INTERESTED PARTY

4. STEPHANIA ACHOM.....4TH INTERESTED PARTY

5. HESKETH M. MBO THU.....5TH INTERESTED PARTY

RULING

This ruling is on the Notice of Motion dated 5/8/2021.

The motion which is by counsel for the Interested Parties seeks orders as follows;

1. The suit has abated
2. The costs of defending the suit be awarded to the 1st, 2nd, 3rd and 4th interested parties.
3. That the said costs be recovered from the estate of the deceased.

The application which is under *Sections 1A, 1B, 3 and 3A* of the *Civil Procedure Act, Order 24 Rules 3(1) and (2) Civil Procedure Rules* and all enabling provisions of the law is grounded on the following amongst others;

- a. That the Plaintiffs died on 24/2/2020
- b. That no application has been made under *Section 3(1)* for the legal representatives to be appointed
- c. That proceedings once commenced must come to an end
- d. That the overriding objective of the Environment and Land Court Act is to enable the Court facilitate the first determination of Environment and land cases.
- e. That the case has been pending in Court for 11 years and this is expensive to the parties.

The application is supported by an affidavit sworn by Maximinus Ekada Maase the 28th Interested Party in which he deposes that this case has been pending in Court for over 11 years and the Plaintiff's heirs are not keen in prosecuting it hence the delay which is oppressive to the other parties who continue incurring costs and suffer anxiety.

The application though served is unopposed.

I have carefully considered the application in its entirety and I find that it has merit for the following reasons;

Firstly, under *Order 24 Rule 3(2) Civil Procedure Rules*, it is provided as follows

“Where within one year no application is made under Sub Rule (1), the suit shall abate so far as the deceased is concerned and, on the application of the Defendant, the Court may award to him the costs which he may have incurred in defending the suit to be recovered from the estate of the deceased Plaintiff.”

Secondly, it is contrary to the overriding objective of the law to keep a land case pending in Court inordinately. This is especially so when one considers *Section 3* of the *Environment and Land Court Act* which provides;

1. “The overriding objective of this Act is to enable the Court to facilitate the just, expeditious and accessible resolution of disputes governed by this Act.

2. The Court shall, in the discharge of its functions under this Act give effect to the Principal object in Subsection (1)

There is no good reason why this case should be pending in Court. The family of the deceased Plaintiff is guilty of inordinate delay.

For the above stated reasons, I allow the Notice of Motion dated 5th August, 2021 in its entirety.

DATED SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 16TH DAY OF

DECEMBER, 2021

M.N. GICHERU

JUDGE