



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT EMBU

H.C.C.C NO. 156 OF 2012

(FORMERLY MERU H.C.C. NO. 297 OF 1993)

MARY NJERIPLAINTIFF

VERSUS

MOHAMMED ALI.....DEFENDANT

R U L I N G

1. This is an application dated 19/12/2017 seeking for orders that one **FEISAL MOHAMMED ALI** the administrator *ad litem* of the estate of the plaintiff **MARY NJERI** now deceased be substituted as the plaintiff. The applicant deposes in his affidavit in support of the application that he is the son of the plaintiff in this case and that the plaintiff passed on 134/09/20176. He further states that for the conclusion of this matter which is pending an application cannot be heard and determined without substitution. He states that he will administer the estate of the deceased plaintiff faithfully.

2. The application was opposed by the respondent in his replying affidavit sworn on 14/05/2018. He deposes that the pending application is to have the applicant be registered as a co-proprietor of **LR. EMBU/ MUNICIPALITY/112/ 498** pursuant to a judgment by Meru Court. It is stated that the judgment was delivered 24 years ago and was followed by several suits between the parties herein pending before various courts being Criminal Revision No.1360 of 2016, Civil Case No.297 of 1993, Judicial Review No.57 of 2014 and Civil Case No.31 of 2018.

3. The respondent prays that the multiple suits be determined first before the pending notice of motion in this case suits be determined first before the pending notice of motion in this case is determined. He says the instant notice of motion is aimed at scuffing the pending suits which is likely to cause prejudice to the respondent.

4. The background of this matter is that the parties were husband and wife and co-proprietors of plot LR.No.1112 /498 in equal shares situated in Embu Municipality. The plaintiff obtained judgment in Meru High Court before the suit was transferred to this court. The decree was to the effect that the plot which was developed be shared between the parties with the plaintiff taking the front part and the defendant/respondent the rear part.

5. The suit was founded on dispute on rental income from the rental premises. From the submissions of the parties in this application it is clear that both of them are sharing rent from the premises.

6. It is not in dispute that this case has already been determined and is only pending execution. Although judgment was delivered many years ago execution has taken a long time to be accomplished. This is because the respondent refused to give consent for the partition of the jointly owned property as required by Section 94(1) of the Land Registration Act No.3 of 2012.

7. The application pending before the court is the one dated 14/11/2016 filed by the plaintiff. It seeks for orders to authorize the Deputy Registrar of this court to sign the necessary documents to facilitate sub-division of plot No.1112/498.

8. I am surprised that in a case that has already been determined where no appeal was filed, the respondent is still resisting execution. In his affidavit, he now deposes that a lot of things have changed on the plot which has been developed over the years effectively changing the subject matter on which the Meru High Court rendered its decision. In my view, this is an attempt to seek review of the judgment which the respondent never appealed against. I find this a baseless ground to oppose the application. It is yet another attempt to delay execution of the court's judgment.

9. The issue of the multiple pending suits between the parties is not a bar to substitution of parties in this case. Upon death of a party, the personal legal representatives have a right to apply for substitution of the deceased party which is necessary for determination of the pending

suit. This applies across the board even to the multiple pending suits. There is no way the respondent herein can proceed with this case alone and shut out the personal representatives of the deceased who have interest in the estate of their deceased mother. The property awaits subdivision forms part of the estate of the deceased plaintiff unless the contrary is proved. It has not been denied that the applicant is a son of the deceased plaintiff or that he is not heir or one of the heirs of the deceased's estate.

10. The applicant has already taken the necessary steps to apply for substitution in this case. He was issued with letters of administration *ad litem* of the estate of Mary Njeri Mohammed on 22/11/2017.

11. In my view, the respondent's opposition to this application is misplaced. I am of the considered view that the applicant has satisfied the court that he ought to be substituted in this case in place of his deceased mother.

12. I find that this application has merit and I hereby allow it as prayed.

13. It is hereby ordered.

DATED, SIGNED AND DELIVERED AT EMBU THIS 8TH DAY OF OCTOBER, 2018.

F. MUCHEMI

JUDGE

IN THE PRESENCE OF: -

Mr. Mugo for Plaintiff/Applicant

Respondent/Defendant present in person