



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KERUGOYA

ELC CASE NO. 85 OF 2012

IN THE MATTER OF THE ENVIRONMENT AND LAND ACT

AND

IN THE MATTER OF LAND PARCEL NO. NTHAWA/GITIBURI/3065 NTHAWA/GITIBURI/3073

JOSEPH MBOGO ISHUMAELAPPLICANT/PLAINTIFF

VERSUS

HENRY NAMU1ST RESPONDENT/DEFENDANT

WAKERE MUGO MUNYAMBU2ND RESPONDENT/DEFENDANT

RULING

This is in respect to the plaintiff/applicant's Notice of Motion dated 23rd December 2013 and filed on 14th January 2014 seeking to have HENRY NAMU and WAKERE MUGO MUNYAMBU (named as respondents) made parties to this suit. The application is based on the ground that although the original defendant one MUGO MUNYAMBU died on 28th March 2013, the said HENRY NAMU and WAKERE MUGO MUNYAMBU who are son and wife respectively of the deceased MUGO MUNYAMBU have not taken any action to be legal representatives of the deceased hence this application.

The application is brought under **Order 24 Rule 4 (1) (2) and (5) of the Civil Procedure Rules.**

Order 24 Rule 4 of the Civil Procedure Rules empowers the Court, upon the death of a sole defendant and on application, to

“ ---- cause the legal representative of the deceased defendant to be made a party -----”

Before an order can be made under the above rule, the person sought to be made a party has to be ***“the legal representative of the deceased defendant”***.

A legal representative is defined in **Section 2 of the Civil Procedure Act** to mean:-

“ a person who in law represents the Estate of a deceased person, and where a party sues or is sued in a representative character the person on whom the Estate devolves on the death of the party so suing or sued”.

It is clear from the plaintiff/applicant’s affidavit in support of this Notice of Motion that neither HENRY NAMU nor WAKERE MUGO MUNYAMBU have taken out any grant of letters of administration in respect of the Estate of the deceased herein. All they have done is obtained the burial permit. They are not administrators of the Estate of their deceased father and husband respectively because an administrator is one to whom a grant of letters of administration has been issued. They are therefore not the legal representatives of the Estate of the late MUGO MUNYAMBU. In the circumstances, it is difficult for this Court to make them parties in this case as prayed. The only option left to the plaintiff/applicant in my view, is to move the High Court under **Schedule 5 Rule 14 of the Law of Succession Act** to appoint either of the two as administrators of the Estate of the late MUGO MUNYAMBU for purposes of this suit.

That being my view of the matter, the Notice of Motion dated 23rd December 2013 and filed herein on 14th January 2014 is dismissed with no order as to costs.

B.N. OLAO

JUDGE

10TH JULY, 2014

10/7/2014

Before

B.N. Olao – Judge

Mwangi – CC

Plaintiff - present

Defendants - absent

COURT: Ruling delivered this 10th day of July 2014 in open Court.

Plaintiff present

Defendants – absent

B.N. OLAO

JUDGE

10TH JULY, 2014

