



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT KAJIADO**

**ELC CASE NO. 926 OF 2017**

**(MACHAKOS HCCC NO. 173 OF 2008)**

**MERITEI OLE TINKOI.....PLAINTIFF**

**VERSUS**

**KESIAYA OLAIKANKAI MOKOLO.....1<sup>ST</sup> DEFENDANT**

**MAILWA GROUP RANCH.....2<sup>ND</sup> DEFENDANT**

**RULING**

What is before Court for determination is the Plaintiff's Administrators: Notice of Motion dated 24<sup>th</sup> August, 2015 brought pursuant to Sections 1A, 1B and 3A and Order 24 Rule 3 of the Civil Procedure Rules. The said Administrators of the estate of MERITEI OLE TINKOI namely GEORGE NDULA MERITEI and KOIN ENE MERITEI seek to be substituted as Plaintiffs' in the suit herein. The application is premised on the grounds on the face of it and the supporting affidavit of GEORGE NDULA MERITEI who is one of the Administrators to the estate of MERITEI OLE TINKOI also known as MERITEI OLE TINGOI NKAIRRAGA. He confirms that Grant of Letters of Administration Intestate in respect of the estate of MERITEI OLE TINKOI herein was issued by the High Court through Registry at Machakos in August 2015. He explains that the Deceased died on 25<sup>th</sup> August, 2014 and at the time of his death, he was the Plaintiff herein. He contends that together with his co administrator, they seek to be substituted in this suit.

The Defendants though duly served failed to oppose the instant application.

The Applicants filed their written submissions to canvass the Application.

**Analysis and Determination**

Upon consideration of the materials presented in respect to the instant application, the only issue for determination is whether the Applicants can be substituted as Plaintiffs in this suit.

The Applicants in their submissions reiterated their claim and relied on the decisions of **PKT (Suing Under the Capacity as the Guardian Ad litem) Vs JMT & ANOR (2017) eKLR**; **Jackson Kiprotich Vs Agnes Moraa Omiti (2018) eKLR**; and **Kimani Njuguna Vs Penina Warura Mwangi & Another (2016) eKLR** to buttress their averments.

Order 24 Rules 1, 2 and 3 of the Civil Procedure Rules provides that: **1. The death of a plaintiff or defendant shall not cause the suit to abate if the cause of action survives or continues. 2. Procedure where one of several plaintiffs or defendants dies and right to sue survives. Where there are more plaintiffs or defendants than one, and any one of them dies, and where the cause of action survives or continues to the surviving plaintiff or plaintiffs alone or against the surviving defendant or defendants alone, the court shall cause an entry to that effect to be made on the record, and the suit shall proceed at the instance of the surviving plaintiff or plaintiffs, or against the surviving defendant or defendants. 3. (1) Where one of two or more plaintiffs dies and the cause of action does not survive or continue to the surviving plaintiff or plaintiffs alone, or a sole plaintiff or sole surviving plaintiff dies and the cause of action survives or continues, the court, on an application made in that behalf, shall cause the legal representative of the deceased plaintiff to be made a party and shall proceed with the suit.'**

In the current scenario, the Plaintiff died on 25<sup>th</sup> August, 2014 as evident in the Death Certificate annexed to the supporting affidavit of the Applicants. The Applicants filed this application for substitution on 24<sup>th</sup> August, 2015 within one year after the death of the Plaintiff. In associating myself with the case of **PKT (Suing Under the Capacity as the Guardian Ad litem) Vs JMT & ANOR (2017) eKLR**, where the Court allowed an application for substitution of the Plaintiff wherein the Applicants had filed an application within one year; while relying on Order 24 Rule 1, 2 and 3 of the Civil Procedure Rules, noting that this application was unopposed, I will proceed to allow the Applicants to be substituted as Plaintiffs' herein.

It is against the foregoing that I find the application dated the 24<sup>th</sup> August, 2015 merited and will allow it. Costs will be in the cause.

**Dated Signed and Delivered at Kajiado this 7<sup>th</sup> Day of December, 2020.**

**CHRISTINE OCHIENG**

**JUDGE**