



**Omoi & 4 others v Mogeni (Environment and Land Case  
343 of 2016) [2025] KEHC 15307 (KLR) (28 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 15307 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KISII  
ENVIRONMENT AND LAND CASE 343 OF 2016**

**M SILA, J**

**OCTOBER 28, 2025**

**BETWEEN**

**GETEMBE OMOI & 4 OTHERS & 4 OTHERS ..... PLAINTIFF**

**AND**

**PAULINE KEMUMA MOGENI ..... DEFENDANT**

**RULING**

**(Application for substitution of deceased defendant; application allowed)**

1. The application before me is that dated 26 June 2025 filed by Benson Getenga Mogeni. He seeks orders that leave be granted for him to substitute the deceased defendant. The application is thus one for substitution brought pursuant to the provisions of Order 24 Rule 2 of the Civil Procedure Rules, 2010.
2. I have gone through the record. The suit was commenced vide an Originating Summons filed on 21 October 2016. The plaintiffs are seeking orders that they be declared owners of 4 acres out of the land parcel Nyaribari Chache/Birongo/47 by way of adverse possession. That land is registered in name of the defendant Paulina Kemuma Mogeni. The defendant filed a replying affidavit to oppose the motion and the matter is pending hearing.
3. In the supporting affidavit, the applicant has introduced himself as son of the defendant. He has deposed that the defendant died on 17 November 2024 and that the cause of action survives her death. The applicant avers that he petitioned and obtained a grant of letters of administration ad litem on 17 June 2025 from the Chief Magistrates' Court at Kisii vide Kisii Miscellaneous Succession Cause No. E071 of 2025. He has annexed the grant ad litem to his affidavit.
4. The application is not opposed.
5. I have considered it and I see no reason not to allow it. I see that the defendant died on 17 November 2024 and indeed the cause of action, i.e one of adverse possession, survives her death. I see that the



applicant has a grant ad litem allowing him to represent the deceased defendant. The application has been made timeously within one year of death, before the suit can abate. The application is hereby allowed. The applicant is granted leave to substitute the deceased defendant.

6. There will be no orders as to costs.

7. Orders accordingly.

**DATED AND DELIVERED THIS 28 DAY OF OCTOBER 2025**

**JUSTICE MUNYAO SILA**

**JUDGE, ENVIRONMENT AND LAND COURT**

**AT KISII**

Delivered in presence of :

Mr. Omwega for the applicant

N/A for the respondents

Court Assistant – Michael Oyuko

