

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT OF KENYA AT KERUGOYA
ELC CASE NO. E015 OF 2024

TANA FISH & MEAT PROCESSORS LTD PLAINTIFF

VERSUS

STANLEY KIMANI IRUNGU 1ST
DEFENDANT

PETER NGANGA NJOMO 2RD DEFENDANT

LAND REGISTRAR, KERUGOYA 3RD
DEFENDANT

AND

LEAH NYAMBURA KIMANI & DANIEL

NDUNGU KIMANI (Sued as legal
representatives of the estate of

STANLEY KIMANI IRUNGU) PROPOSED SUBSTITUTES FOR 1ST
DEFENDANT

GEORGE MUIRO KINYANOI [Sued as legal

representative of the estate of STANLEY KIMANI IRUNGU) APPLICANT

RULING

[NOTICE OF MOTION DATED 22ND MAY 2025 & UNDATED NOTICE OF MOTION
FILED ON 12TH AUGUST 2025]

1. The plaintiff filed the application dated 22nd May 2025 seeking for among others:

- a. Leave to substitute the 1st defendant who died on 9th April 2025 with the legal representatives, Leah Nyambura Kimani & Daniel Ndungu Kimani, who are his widow and son respectively.
- b. Leave to amend the plaint to reflect the substituted parties.

The application is premised on the six (6) grounds on its face marked (a) to (f) respectively and supported by the affidavit of Johnstone Muthanga, a director with the plaintiff, sworn on the 22nd May 2025, and Antony M. Kahuthu, advocate, in which they inter alia deposed that the plaintiff has got to know through the social media that the plaintiff died on 9th April 2025 and was buried on 20th April 2025; that the deceased 1st defendant wife and son should be substituted for the 1st defendant for the suit to proceed to hearing; that counsel has checked from the Nakuru CTS for cause under which the grant Ad Litem relied upon by George Muiru Kinyanjui, applicant, and it was not available; that the said grant Ad Litem was obtained fraudulently and should not be relied upon.

2. George Muiru Kinyanjui, applicant, moved the court through the undated notice of motion filed on 12th August 2025 seeking for inter alia:
 - a. That leave be granted for him, as legal representative pursuant to the grant Ad Litem issued in **Nakuru CM P& A Cause No. E231 of 2025**, to substitute the 1st defendant who died on 9th April 2025.
 - b. That leave to amend the plaint to reflect the 1st defendant's substitution be granted.

The application is based on the two grounds on its face marked (a) and (b) respectively, and supported by the affidavit of George Muiru Kinyanjui sworn on 9th August 2025 deposing among others that the 1st defendant died on 9th April 2025; that he has been issued with the grant **Ad Litem in Nakuru CM P&A Cause No. E231 of 2025** on 4th August 2025, and should be substituted as the legal representative of the 1st defendant's estate.

3. The plaintiff's applications is opposed by Leah Nyambura Kimani through her affidavit sworn on 25th September 2025 in which she inter alia deposed that she is the widow to the 1st defendant who is now deceased; that the deceased's family was not aware of the filing of the

plaintiff's application dated 22nd May 2025 seeking to have her and another substituted for the 1st defendant, who owned properties in Kajiado, Kirinyaga and Nakuru; that it is the deceased's family that has the responsibility to make a the decision on who will apply for letters of administration for the estate and the plaintiff's application seeking to substitute them when they have no grant should be dismissed; that the deceased's family decided to file for a Limited Grant vide **Nakuru Ad Litem Cause No. 231 of 2025** for the purposes of defending two suits in Kirinyaga and Kajiado, and the application by one George Muiro Kinyanjui dated 9th August 2025, should be granted for this suit to proceed.

4. The learned counsel for the plaintiff filed two sets of submissions, one in support of the plaintiff's application and the second in opposition to that by the applicant, which the court has considered.
5. The two applications raises the following issues for determination by the court:
 - a. *Who between Leah Nyambura Kimani & Daniel Ndungu Kimani, and George Muiro Kinyanjui has the capacity to be substituted for the estate of Stanley Kimani Irungu, deceased 1st defendant.*
 - b. *Who pays the costs?*
6. The court has carefully considered the grounds on the two applications, affidavit evidence presented, submissions by the learned counsel for the plaintiff, superior court decisions cited and come to the following conclusions:
 - a. Going by the affidavit evidence presented by the plaintiff and the applicant, the 1st defendant, Stanley Kimani Irungu, died on 9th April 2025. The plaintiff's claim commenced through the plaint dated 6th June 2025, being primarily over ownership of land parcel Kiine/Rukanga/1148, suit property, survived the 1st defendant's death, and the plaintiff seeks through their application dated 22nd May 2025 to him the deceased 1st defendant substituted by Leah Nyambura Kimani & Daniel Ndungu Kimani, being his widow and son respectively.

The court has noted that no grant of whatever description has been referred to in the application upon which the two proposed substitutes for the deceased 1st defendant can be said to have been appointed legal representatives of the estate. I also notice that there is no evidence of any citation having been filed by the plaintiff before a succession court to compel the two proposed substitutes for the deceased 1st defendant to take out letters of administration in the said estate.

- b. The application is opposed by Leah Nyambura Kimani, the widow, through her affidavit sworn on 25th September 2025. She deposed at paragraph (2) inter alia that her family did not know of the plaintiff's application dated 22nd May 2025 seeking to have her to be substituted as legal representative of the deceased. She further deposed that she lacked the *locus standi* to be substituted for the deceased 1st defendant as she was without letters of administration, which deposition has not been rebutted or challenged by the plaintiff. At paragraphs (5), (7) & (8) of the affidavit, Leah Nyambura Kimani, supported the undated application of George Muiro Kinyanjui, to substitute the deceased 1st defendant, as he has a limited grant issued by a Nakuru court.
- c. The said limited grant has been challenged by the plaintiff through the further affidavit of Antony M. Kahuthu, advocate, who deposed that he had checked the "CTS in Nakuru" and was unable to see the matter where the Grant Ad Litem is said to have been issued. That the grant Ad Litem relied on by the applicant "was gotten through fraudulent ways...." The court however notes that no documentary evidence has been attached in proof of the fraud allegation.
- d. The two applications are essentially a contest on who should be substituted for the deceased 1st defendant. Though the plaintiff seeks to have the deceased 1st defendant substituted by the deceased's widow and son, and whereas I agree the two may rank

higher in priority under the Law of Succession Act chapter 160 of Laws of Kenya as submitted by the plaintiff's counsel, the determination of the two applications will be influenced by who has the *locus standi*/capacity to represent the estate as a legal representative.

- e. **Order 24 Rule 4(1) of the Civil Procedure Rules** provides for procedure in case of death of one of several defendants or sole defendant as follows: -

“4. (1) Where one of two or more defendants dies and the cause of action does not survive or continue against the surviving defendant or defendants alone, or a sole defendant or sole surviving defendant dies and the cause of action survives or continues, the court, on application made in that behalf, shall cause the legal representative of the deceased defendant to be made a party and shall proceed with the suit.”

Section 2 of the Civil Procedure Act chapter 21 of Laws of Kenya provides that a ***“legal representative”*** to ***“means 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 not disputed that this court is with jurisdiction to hear and determine applications for substitution of deceased parties in a litigation, in view of the above provision of the law among others.

- f. The learned counsel for the plaintiff has in his submissions referred to the following Court of Appeal decisions on among others capacity of parties representing deceased persons' estates in litigations:
- i. **Virginia Edith Wamboi Otieno versus Joash Ochieng Ougo & Another (Civil Appeal No. 31 of 1987) [KECA 63 (KLR)]**

(Civ) (15 May 1987) (Judgement), in support of the disposition that a person who has not obtained a grant of representation cannot represent an estate in any legal proceedings.

- ii. *Troustik Union International & Another versus Jane Mbeyu & Another [1993] KECA 89 (KLR)* for the position that only a person holding a valid grant of representation has capacity to sue or be sued on behalf of a deceased's estate. A stranger has no *locus standi*.
- iii. *Said Sweilem Gheithan Saanum versus Commissioner of Lands[being sued through Attorney General] & 5 Others [2015] KECA 284 (KLR)* in support of the holding that proceedings undertaken without proper substitution are incompetent and liable to be struck out.

The reasoning in the above decisions are not in any way in support of the plaintiff's application dated the 22nd May 2025. This is because the plaintiff has not discharged their legal duty under sections 107 to 109 of the Evidence Act chapter 80 of Laws of Kenya to establish that Leah Nyambura Kimani & Daniel Ndungu Kimani, who it seeks to be substituted for the deceased 1st defendant have the *locus standi*/capacity to represent the deceased estate in a legal proceeding.

- g. In his undated application supported by the affidavit sworn on 9th August 2025, and filed on 12th August 2025 seeking to be substituted for the deceased 1st defendant, George Muiro Kinyanjui, the applicant, has annexed to his supporting affidavit a copy of a document headed "**Limited Grant ad Litem Under section 54 of the 5th Schedule**" reading as follows:

REPUBLIC OF KENYA
IN THE CHIEF MAGISTRATE'S COURT AT NAKURU
PROPBATE AND ADMINISTRATION

ADLITEM CAUSE NO. E231 OF 2025
IN THE MATTER OF THE SETATE OF THE LATE STANLEY KIMANI
IRUNGU-(DECEASED)

LIMITED GRANT OF LETTERS OF ADMINISTRATION AD LITEM

BE it known that letters of Administration Ad Litem of all the estate of the above-named **STANLEY KIMANI IRUNGU - (DECEASED)** who died domiciled in Kenya at **GATUYA S/LOC on 09th APRIL, 2025** which devolves to and vests in his Personal Representative but limited to the purposes only for filing suit, and until further Representation were granted by this court to **GEORGE MUIRO KINYANJUI of P. O. BOX 3262-20100, NAKURU**, she/he/they having undertaken faithfully to administer such estate according to law (Limited as aforesaid) and until further Representation be granted and render true and just account thereof whenever required by law so to do.

GRANT OF LETTERS OF ADMINISTRATION AD LITEM ISSUED LIMITED FOR THE PURPOSE (of filing/defending, a suit or representing suit) defending **KAJIADO ELC NO. E015 OF 2024 & KIRINYAGA ELC NO. E038 OF 2023.**

ISSUED by the Chief Magistrate's Court through the Registry at **Nakuru this 4TH AUGUST, 2025.**

(signed)
HON. C. MENYA
CHIEF MAGIDTRATE'S COURT
NAKURU"

That as shown at (c) above, the plaintiff has through the further affidavit of Antony M. Kahuthu, advocate, opposed any reliance of the said grant Ad Litem terming it to be a forgery as he did not trace it on the "CTS in Nakuru". It is trite that proof of allegations of fraud is above balance of probabilities, and as no such proof from the Chief Magistrates Court Nakuru or the police has been tendered by counsel, and being it being evident that the applicant's application is supported by 1st defendant's widow, Leah Nyambura Kimani, through her affidavit sworn on 25th September 2025, the court will disregard the allegation of fraud.

- h. It follows therefore that as between Leah Nyambura Kimani & Daniel Ndungu Kimani, who the plaintiff seeks to substitute the 1st defendant, and George Muiro Kinyanjui, the applicant seeking to substitute the same defendant, the one who has legal capacity to represent the estate of the deceased 1st defendant is the applicant, on the strength of the grant Ad Litem issued on 4th August 2025 in **Nakuru CM P&A Ad Litem Cause No. E231 of 2025**. That going by the deposition in the affidavit of Leah Nyambura Kimani, the widow, the said applicant has the support of the deceased 1st defendant's family to be so substituted.
- i. Under **Section 27 of the Civil Procedure Act chapter 21 of Laws of Kenya**, costs follow the event unless otherwise directed by the court on reasonable ground. In this instance, I find it fair and just for the plaintiff to bear their costs as it has failed in its application, while the costs of the applicant who has succeeded in his application be in the cause.

7. Flowing from the foregoing determinations on the two notices of motion, the court finds and orders as follows: -

- a. ***That the plaintiff's application dated 22nd May 2025 has no merit and is dismissed with costs.***
- b. ***That the applicant's undated application filed on 12th August 2025 has merit and is allowed as prayed with costs in the cause. The court further directs as hereunder;***
- i. ***That the George Muiro Kinyanjui, is hereby substituted for the deceased 1st defendant, who died on 9th April 2025.***
 - ii. ***That the plaintiff is to file and serve an amended plaint reflecting the said substitution in twenty-one (21) days from today.***
 - iii. ***That the defendants to file and serve amended statements of defence, reflecting the said substitution in fifteen (15) days after service.***

It is so ordered.

**DATED, SIGNED AND VIRTUALLY DELIVERED ON THIS 4TH DAY OF
FEBRUARY 2026.**

**S. M. Kibunja
ELC JUDGE**

In The Presence of:

Plaintiff – No appearance

Defendants – No appearance

Applicant – Mr. Ayuka

M/s Onyango for Macharia for interested party

Kinyua-Court Assistant.

**S. M. Kibunja
ELC JUDGE**

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