



**Obulinji v Agengo (Sued as the Administratrix of the Estate of Yusuf Gero Agengo - Deceased)
(Environment and Land Case 186 of 2017) [2026] KEELC 772 (KLR) (17 February 2026) (Ruling)**

Neutral citation: [2026] KEELC 772 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISUMU
ENVIRONMENT AND LAND CASE 186 OF 2017
SO OKONG'O, J
FEBRUARY 17, 2026**

BETWEEN

CHRISTINE OBULINJI PLAINTIFF

AND

**EUNICE AGENGO (SUED AS THE ADMINISTRATRIX OF THE ESTATE OF
YUSUF GERO AGENGO - DECEASED) DEFENDANT**

RULING

1. The Plaintiff brought this suit against Yusuf Gero Agengo and the Municipal Council of Kisumu as the 1st and 2nd Defendants, respectively, on 16th November 2004. The Plaintiff amended the plaint on 19th November 2004, by which amendment, the Plaintiff struck out the Municipal Council of Kisumu as a party to the suit, thereby leaving Yusuf Gero Agengo as the sole Defendant. The Plaintiff amended the plaint again on 10th April 2012.
2. The sole Defendant, Yusuf Gero Agengo died on 5th February 2018. No action was taken by the family of the deceased to substitute him in the suit with a personal representative. On 2nd December 2019, the Plaintiff petitioned the Chief Magistrate's Court at Kisumu for a grant of letters of administration ad litem in respect of the estate of Yusuf Gero Agengo (the deceased) to be issued to the deceased's widow, Eunice Agengo, for the purposes of substituting the deceased in this suit. Following that petition, a limited grant of letters of administration ad litem in respect of the estate of the deceased was issued to Eunice Agengo on 10th May 2021.
3. On 14th June 2021, the Plaintiff applied to this court for the substitution of the deceased Defendant, Yusuf Gero Agengo, with Eunice Agengo, who had been appointed as the administrator of his estate, and for the revival of the suit which had abated as at the time the application was made. The application was opposed. In a ruling delivered herein on 2nd December 2021, the court allowed the application, and Eunice Agengo was substituted in the suit as the Defendant in place of the deceased, Yusuf Gero



Agengo. Following that ruling, the plaint was further amended on 27th January 2022 to effect the substitution.

4. It is not clear from the record why fresh Summons to Enter Appearance were taken out on 31st May 2023 and served upon Eunice Agengo, who had joined the suit as a substitute for the deceased defendant, Yusuf Gero Agengo. The new Defendant, Eunice Agengo, entered an appearance and filed a statement of defence dated 24th July 2023 in which she denied the Plaintiff's claim in its entirety.
5. The hearing of the suit commenced before me on 17th October 2024. The Plaintiff gave evidence and called five witnesses in support of her case. The Plaintiff's case was closed on 7th April 2025 when the Defendant also gave evidence and closed her case. After the Defendant was examined in chief and cross-examined, the court put some questions to her. The Defendant told the court that Yusuf Gero Agengo, deceased, had two families. She told the court that she was not the administrator of the estate of the deceased. After the Defendant closed her case, the Plaintiff's advocates told the court that it was necessary to join the administrators of the estate of the deceased to the suit. The court gave the Plaintiff's advocate time to take instructions on how the Plaintiff wished to proceed further in the matter.
6. What is now before the court is the Plaintiff's application brought by way of Notice of Motion dated 24th April 2025 seeking the following orders;
 1. That Mically Ochango Muka and Lavender Akinyi Gero, who have applied to be the administrators of the estate of the late Yusuf Gero Agengo be joined as co-defendants to Eunice Agengo, who had been appointed as the administrator ad litem of the estate.
 2. That the costs of the application be in the cause.
7. The application was supported by the affidavit of the Plaintiff sworn on 24th April 2025. The Plaintiff averred that after the death of Yusuf Gero Agengo, all efforts to identify his legal representatives who could be substituted in the suit in his place did not succeed. The Plaintiff averred that it was for that reason that she petitioned the court to issue a grant of letters of administration ad litem to the deceased's widow, Eunice Agengo, so that she could be substituted in the suit in place of the deceased. The Plaintiff averred that after the grant of letters of administration ad litem was issued to Eunice Agengo, she was added to the suit, and she participated in the hearing of the suit. The Plaintiff averred that it was during Eunice Agengo's testimony that she disclosed that the deceased had two wives, and that her co-wife, Mically Ochango Muka, and step-daughter, Lavender Akinyi Gero, had applied for a full grant of letters of administration in respect of the estate of the deceased. The Plaintiff averred that the said Mically Ochango Muka and Lavender Akinyi Gero had not applied to be joined in the suit as parties to avoid liability should a judgment be entered in favour of the Plaintiff against the estate of the deceased. The Plaintiff averred that it was necessary for Mically Ochango Muka and Lavender Akinyi Gero to be added as Defendants to the suit so that the estate of the deceased could be bound by any judgment delivered by the court in this suit.
8. The application was opposed by the Defendant through grounds of opposition dated 13th August 2025. The Defendant averred that the application was filed contrary to the provisions of Order 24 Rule 4(3) of the Civil Procedure Rules.
9. The application was argued orally on 2nd October 2025, when Mr. Okero SC appeared for the Plaintiff/Applicant, and Mr. Munuang'o appeared for the Defendant/Respondent. The Plaintiff's advocate submitted that the Defendant's contention that the application was filed contrary to the provisions of Order 24 Rule 4(3) of the Civil Procedure Rules had no basis. The Plaintiff's advocate submitted that this suit had abated, but the same was revived by the court in a ruling delivered on 2nd November 2021, pursuant to which the Defendant was added to the suit.



10. In his submissions in reply, the Defendant’s advocate submitted that the deceased, Yusuf Gero Agengo died on 5th February 2018 and should have been substituted within 1 year from that date. The Defendant’s advocate submitted that the Defendant, Eunice Agengo did not apply for a grant of letters of administration ad litem in respect of the estate of the deceased. The Defendant’s advocate submitted that the application for a grant of letters of administration ad litem in respect of the estate of the deceased was made by the Plaintiff’s advocate. The Defendant’s advocate submitted that the Defendant was joined in the suit without her knowledge, as there was no citation before the application for a limited grant was made by the Plaintiff. The Defendant’s advocate submitted that by the time the application for substitution of the deceased with the Defendant was made on 11th June 2021, Mically Ochango Muka and Lavender Akinyi Gero had already applied for a full grant of letters of administration in respect of the estate of the deceased, Yusuf Gero Agengo. The Defendant’s advocate submitted that a limited grant of letters of administration should not have been issued in respect of the estate of the deceased since an application had already been made for a full grant of letters of administration. The Defendant’s advocate submitted that the limited grant issued to the Defendant, Eunice Agengo, was illegal. The Defendant’s advocate submitted that the application before the court was belated and should not be allowed.
11. In a rejoinder, the Plaintiff’s advocate submitted that the Defendant had not made any attempt to set aside the orders made by the court on 2nd November 2021, reviving the suit and substituting the deceased, Yusuf Gero Agengo, with the Defendant, Eunice Agengo. The Plaintiff’s advocate submitted further that there was no evidence that a full grant of letters of administration had been issued to Mically Ochango Muka and Lavender Akinyi Gero. The Plaintiff’s advocate averred that what was produced by the Defendant in court was only a Gazette Notice of the petition for the grant by the two. The Plaintiff’s advocate submitted that the Plaintiff was not seeking to substitute the deceased with Mically Ochango Muka and Lavender Akinyi Gero but to add the two to the suit as co-defendants.

Analysis and Determination

12. I have considered the Plaintiff’s application together with the affidavit filed in support thereof. I have also considered the grounds of opposition filed by the Defendant in opposition to the application. Finally, I have considered the submissions by the advocates for the parties. The Plaintiff’s application was brought principally under Order 1 Rule 3 of the Civil Procedure Rules, which provides as follows:

All persons may be joined as defendants against whom any right to relief in respect of or arising out of the same act or transaction or series of acts or transactions is alleged to exist, whether jointly, severally or in the alternative, where, if separate suits were brought against such persons any common question of law or fact would arise.”

13. Order 1 Rule 10(1), (2), (3) and (4) of the Civil Procedure Rules, provides as follows:

- “(1) Where a suit has been instituted in the name of the wrong persons as plaintiff, or where it is doubtful whether it has been instituted in the name of the right plaintiff, the court may at any stage of the suit, if satisfied that the suit has been instituted through a bona fide mistake, and that it is necessary for the determination of the real matter in dispute to do so, order any other person to be substituted or added as plaintiff upon such terms as the court thinks fit.
- (2) The court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence



before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all questions involved in the suit, be added.

- (3) No person shall be added as a plaintiff suing without a next friend or as the next friend of a plaintiff under any disability without his consent in writing thereto.
 - (4) Where a defendant is added or substituted, the plaint shall, unless the court otherwise directs, be amended in such manner as may be necessary, and amended copies of the summons and of the plaint shall be served on the new defendant and, if the court thinks fit, on the original defendants.”
14. Order 1 Rule 3 of the Civil Procedure Rules provides for the persons who may be joined as defendants in a suit, and Order 1 Rule 10 empowers the court to substitute and add parties to an existing suit, as in the present case. In my view, under Order 1 Rule 10(2) of the Civil Procedure Rules, the court can only join a person as defendant to an existing suit in two instances, first, where such person ought to have been joined as a defendant under Order 1 Rule 3 of the Civil Procedure Rules aforesaid and was not so joined and secondly, where the presence of such person before the court may be necessary to enable the court to adjudicate and settle all questions involved in the suit.
 15. The burden was on the Plaintiff to meet the threshold for joinder set out in Order 1 Rule 10 of the Civil Procedure Rules. The Plaintiff’s claim was against the deceased, Yusuf Gero Agengo, who at all material times was the registered owner of all that parcel of land known as L.R No. 15983/123. The Plaintiff averred that the deceased had constructed an illegal and unauthorised structure on his property adjacent to the Plaintiff’s parcel of land, L.R No. 15983/124, which was not only a nuisance to the Plaintiff but also caused actual damage to the Plaintiff’s property. The Plaintiff averred that on 10th June 2012, a fire from a charcoal stove on the deceased’s illegal structure caused the balcony of the structure to catch fire, which spread to the Plaintiff’s building, destroying the upper floor of the building. The Plaintiff averred that the fire was caused by the deceased’s negligence. The Plaintiff sought judgment against the deceased for both a prohibitory and a mandatory injunction, general and exemplary damages for nuisance and negligence. The Plaintiff also sought special damages in the sum of Kshs. 2,720,686.05, and the costs of the suit.
 16. The deceased denied the claim. While the suit was pending, the deceased died on 5th February 2018, and was substituted on the Plaintiff’s application, with the Defendant to whom a limited grant of letters of administration ad litem had been issued on 10th May 2021. During the hearing of the suit, it came out that by the time the Plaintiff applied on 2nd December 2019 in Kisumu Chief Magistrate’s Court Succession Cause No. 127 of 2019, for a grant of letters of administration ad litem to be issued to the current Defendant so that she could substitute the deceased as a Defendant in the suit, the deceased other widow and daughter, Mically Ochango Muka and Lavender Akinyi Gero had already filed a petition in the same court on 4th July 2018 for a full grant of letters of administration in respect of the estate of the deceased in, Kisumu Chief Magistrate’s Court Succession Cause No. 473 of 2018. The Petition was published in the Special Issue of the Kenya Gazette of 24th August 2018.
 17. The Plaintiff has now sought the joinder of Mically Ochango Muka and Lavender Akinyi Gero to the suit as co-defendants to the current Defendant, Eunice Agengo. The Plaintiff has made it clear that she is not trying to substitute the deceased with Mically Ochango Muka and Lavender Akinyi Gero as the deceased had already been substituted with the current Defendant, Eunice Agengo. The Plaintiff is also not trying to strike out Eunice Agengo from the suit and add Mically Ochango Muka and Lavender Akinyi Gero as her replacement. As mentioned earlier, the Plaintiff’s claim was against the deceased and now against the deceased’s estate. Eunice Agengo was added to the suit as an administrator of the



estate of the deceased on the strength of a limited grant of letters of administration ad litem that had been issued to her.

18. A limited Grant of Letters of Administration, like the one issued to the current Defendant, Eunice Agengo, is normally issued where, due to the urgency involved or special circumstances, it may not be possible to wait until a full Grant of Letters of Administration is issued. When the Plaintiff applied for a limited grant of letters of administration ad litem to be issued to Eunice Agengo so that she could be substituted in this suit in place of the deceased, she was not aware that an earlier application for a full Grant of Letters of Administration had been made by Mically Ochango Muka and Lavender Akinyi Gero in the same court on 4th July 2018. When the Chief Magistrate's court issued a limited grant of letters of administration ad litem to Eunice Agengo on 10th May 2021, the court was also not aware that there was in existence an earlier application for a full Grant of Letters of Administration in respect of the same estate.
19. I have perused the court file for Kisumu Chief Magistrate's Court Succession Cause No. 473 of 2018, which I called for from the court archives, in which Mically Ochango Muka and Lavender Akinyi Gero had applied for a full Grant of Letters of Administration in respect of the same estate of Yusuf Gero Agengo, deceased. I have noted that the petition for Grant of Letters of Administration Intestate in respect of the estate of the deceased, Yusuf Gero Agengo was filed by Mically Ochango Muka and Lavender Akinyi Gero on 4th July 2018. I have further noted that a full Grant of Letters of Administration Intestate in respect of the estate of the deceased was issued to them on 4th October 2018, and the same was confirmed on 31st October 2023. This means that when the Plaintiff sought a limited grant of letters of administration ad litem in respect of the estate of the deceased to be issued in favour of Eunice Agengo, claiming that she (Eunice Agengo) had delayed in taking out a Grant of Letters of Administration in respect of the estate of the deceased, the estate of the deceased already had administrators duly appointed by the court, namely, Mically Ochango Muka and Lavender Akinyi Gero. When the Plaintiff applied on 14th June 2021 for the substitution of the deceased in the suit with Eunice Agengo, Mically Ochango Muka and Lavender Akinyi Gero had been appointed as the administrators of the estate of the deceased and should have been the ones to be substituted in the suit in place of the deceased.
20. I am of the view that the limited grant of letters of administration ad litem in respect of the estate of the deceased, Yusuf Gero Agengo, issued to Eunice Agengo was issued in error. She was similarly substituted in this suit in error. The court that issued the limited grant of letters of administration ad litem to Eunice Agengo and the court that substituted the deceased with Eunice Agengo were not informed that a full Grant of Letters of Administration Intestate in respect of the estate of the deceased had already been issued to Mically Ochango Muka and Lavender Akinyi Gero.
21. I am of the view that the Plaintiff should have admitted that errors occurred in the substitution of the deceased with Eunice Agengo and should have sought ways of correcting them. I believe that with due diligence, the Plaintiff should have learnt that Mically Ochango Muka and Lavender Akinyi Gero had already applied for and had been issued with a full Grant of Letters of Administration Intestate in respect of the estate of the deceased at the time the Plaintiff purported to apply for a limited grant of letters of administration ad litem to be issued to Eunice Agengo. I am unable to allow the Plaintiff's present application as framed. Mically Ochango Muka and Lavender Akinyi Gero are the administrators of the estate of the deceased. They can only be joined in this suit in that capacity and not otherwise. The Plaintiff has no claim against them in their personal capacities. They cannot, therefore, be added to the suit simply as "co-defendants to the administrator ad litem."



22. The Plaintiff's application would have been considered by this court differently if the Plaintiff had sought to strike out Eunice Agengo from the suit for having been substituted in the suit in place of the deceased in error, and to substitute the deceased with the administrators of his estate, Mically Ochango Muka and Lavender Akinyi Gero, who should have been the correct substitutes of the deceased in the suit in the first place, or to review the ruling of this court made on 2nd December 2021 to have, Mically Ochango Muka and Lavender Akinyi Gero, instead of Eunice Gero, substituted as Defendants in place of the deceased. I am not saying that these would work. It is up to the advocates concerned to think through the situation and decide on the way forward. What I am saying is that the court would have had before it some attempt to correct the previous mistakes made in the matter to bring this 21-year-old suit back on track for finalisation.
23. I am of the view that with the new information that has emerged following my perusal of Kisumu Chief Magistrate's Court Succession Cause No. 473 of 2018, the application before me is not properly framed. I wonder why the Plaintiff did not take the trouble to peruse the court file for Kisumu Chief Magistrate's Court Succession Cause No. 473 of 2018 before bringing the present application.

Conclusion

24. In the final analysis and for the reasons set out above, I find no merit in the Notice of Motion application dated 24th April 2025. The Plaintiff may have to go back to the drawing board. The application is struck out with costs to the Defendant.

Written and signed at Kisumu by

S. OKONG'O

JUDGE

DELIVERED, DATED AND COUNTERSIGNED AT KISUMU ON THIS 17TH DAY OF FEBRUARY 2026

E. ASATI

JUDGE

Ruling delivered virtually through Microsoft Teams Video Platform in the presence of:

for the Plaintiff

for the Defendant

-Court Assistant

