



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAKURU

ELC NO. 2 OF 2018

DORCAS NYAMBURA KURIA (suing as the Administrator of the Estate of the Late Joseph Gacheru)**PLAINTIFF**

VERSUS

PHILIP MUREITHI KURIA.....**1ST DEFENDANT**

FRESHIA WANGARI**2ND DEFENDANT**

DISTRICT LAND REGISTRAR, NAKURU...**3RD DEFENDANT**

ATTORNEY GENERAL**4TH DEFENDANT**

RULING

(Application for substitution; application denied as the applicant not holding letters of administration for the estate of the deceased for whose benefit the suit was filed; applicant holding a grant for the estate of the plaintiff but plaintiff had filed suit as administrator; person with capacity would be the holder of a grant de bonis non or a separate grant for the estate for whose benefit the suit was filed; applicant thus not having capacity; application dismissed)

1. The application before me is that dated 16 April 2019 filed by one Stephen Kamau Karanja, who wishes to substitute Dorcas Nyambura Kuria, the original plaintiff in this case and who is said to be deceased.

2.To put matters into context, this suit was commenced through a plaint which was filed on 4 March 2016 by Dorcas Nyambura Kuria (Dorcas), who was suing as the administrator of the estate of Joseph Kuria Gacheru, through a grant ad litem. Dorcas pleaded that she is the widow of Joseph Kuria Gacheru (Gacheru) while the 1st and 2nd defendants were her step-children. She pleaded that the 1st and 2nd defendants in cahoots with the District Land Registrar, named as 3rd defendant, fraudulently registered two parcels of land being Mau Narok/Siapei Block 1/155 (Likia) and Mau Narok Siapei Block 1/612 (Likia) in their names while in the knowledge that the said properties belonged to the late Mr. Gacheru. In the suit, Dorcas sought orders of a declaration that the suit properties belong to Mr. Gacheru (deceased) and for a cancellation of the titles of the 1st and 2nd defendants.

3. On 17 April 2018, when the matter came up for mention, it was revealed that Dorcas had died around 8th/9th March 2018. On 18 March 2019, the matter came up for mention and on that day, given that one year had lapsed since the demise of the plaintiff, I marked the suit as abated. Thereafter, this application was filed on 23 April 2019.

4.The applicant, Stephen Kamau Karanja, in his supporting affidavit, has deposed inter alia that Dorcas was his biological mother and that she died on 9 March 2018. He has deposed that on 29 February 2019, he petitioned for a grant of letters of administration ad litem in the Chief Magistrate’s Court, which was referred to the High Court. It is deposed that at the time the High Court Judge was on leave and he had to wait until he resumes before his application for a limited grant ad litem could be considered. On 19 March 2019, his application was allowed and he was issued with the grant ad litem. He thereafter filed this application. He has averred that the estate of the plaintiff is still desirous of prosecuting this suit and that the delay in filing for the grant and this application were occasioned by financial distress. To his affidavit, he has annexed the Certificate of Death of Dorcas and the grant ad litem enabling him to sue on behalf of the estate of Dorcas.

5.The application is not opposed but I have a problem with it and I am not inclined to allow it.

6. The problem I have is with the grant that the applicant holds. That grant is in respect of the estate of Dorcas Nyambura Kuria. However, it

needs to be recalled that this suit is not in respect of the estate of Dorcas Nyambura Kuria, but in respect of the estate of Joseph Kuria Gacheru. Indeed, when Dorcas filed this suit, it was made clear that the suit is filed in respect of the estate of Joseph Kuria Gacheru, and Dorcas held a grant ad litem limited for purposes of filing suit on behalf of the estate of the said Mr. Gacheru. It does not help the applicant to hold a grant in respect of the estate of Dorcas, for as I have explained, the suit herein is in respect of the estate of Mr. Gacheru. For one to be allowed to substitute, he/she needs to hold a grant in respect of the estate of Mr. Gacheru and not Dorcas. As matters stand, the applicant does not have capacity to represent the estate of Mr. Gacheru and having no capacity I am unable to allow him to substitute Dorcas Nyambura Kuria. He will need to have a grant in respect of the estate of Mr. Gacheru before he can be allowed to agitate a suit on behalf of his estate.

7. In an ordinary succession case, for a complete grant, where the executor or administrator dies, one applies for letters of administration *de bonis non*, which is for purposes of completing the administration of the estate, and replacing the deceased administrator/executor. This sort of grant is not a grant in respect of the estate of the first administrator/executor, but for all intents and purposes is in respect of the estate of the person whose estate is under administration. Where the grant is limited, any person can apply for letters of administration of the estate of the person whose estate is under administration, so as to replace the person who held the limited grant but who is now deceased. This is reflected under Rule 21 of the Fifth Schedule to the Law of Succession Act, Cap 160, Laws of Kenya, which provides as follows :-

“21. When a limited grant has expired by effluxion of time, or the happening of the event or contingency on which it was limited, and there is still some part of the deceased’s estate unadministered, letters of administration shall be granted to those persons to whom original grants might have been made.”

8. Such grant is not in respect of the estate of the administrator/executor but in respect of the person whose estate is under administration (the first deceased person). That is not what the applicant holds, and for those reasons, the applicant cannot have capacity to represent the estate of Mr. Gacheru.

9. For the above reasons, this application is hereby dismissed, but since it was not opposed, I make no orders as to costs.

Dated, signed and delivered in open court at Nakuru 18th day of July 2019.

JUSTICE MUNYAO SILA

ENVIRONMENT & LAND COURT AT NAKURU

In presence of : -

Mrs. Mukira for the applicant.

Ms. Karuga for the 1st and 2nd defendants.

Court Assistants- Nelima Janepher/Patrick Kemboi.

JUSTICE MUNYAO SILA

ENVIRONMENT & LAND COURT AT NAKURU