



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

CIVIL CASE NUMBER 7 OF 2021

ZEPHANIA KIPKEBUT CHEPKONGA

APPLICANT

VERSUS

JOSEPH C. TUITOEK

RESPONDENT

RULING

1. By Notice of Motion dated 2nd October 2025 the Plaintiff seeks reliefs as hereunder;-

- a) Spent.
- b) **THAT** the court does grant leave to M/s Tarigo, Kiptoo & Company Advocates to come on record on behalf of the Plaintiff, and their Notice of Appointment dated 1/10/2025 be deemed as properly filed.
- c) **THAT** the court does transfer this matter to the Environment and Land Court at Kabarnet for further hearing and disposal.
- d) **THAT** the court does substitute the Plaintiff and the Defendant herein with Renison Kibet

Seguton and Joyce Kipkurui Alias Joyce Kipkurui Tuitoek respectively.

e) THAT the court does extend the period of executing the decree issued on 14/5/1993.

f) Any other order (s), the court may deem fit to issue.

g) THAT the costs of the Application be provided for.

2. The Application is supported by an affidavit sworn by the said Renison Kibet Seguto who avers that he is one of the sons of the Plaintiff herein who died on 5/10/2018. He was subsequently appointed as the Legal Representative of the deceased's Estate. The Defendant is also said to have died on 4/11/2011 and the above named Joyce Kipkurui *Alias* Joyce Kipkurui Tuitoek is the Legal Administratrix of his Estate.

3. The witness further states that this suit was filed in 1989 and the Decree was issued on 14/5/1993. That Decree was not challenged by the deceased Defendant, and to implement the Decree, the parties commissioned a surveyor to carry out necessary subdivision of the suit property known as **Baringo/Kewamoi/ 'A'/484**. Thereafter the deceased Plaintiff died of injuries he

suffered in a road traffic accident and was not able to complete the process of execution of the Decree. According to the witness, the land sub division documents only came to their knowledge recently, hence their plea for extension of the validity period of the Decree.

4. For the stated reasons *inter alia*, the stated orders are craved.
5. The said Joyce Kipkurui Tuitoek swore an affidavit in reply to the Application. While confirming that she is the Legal Representative of the Estate of the deceased Defendant, she attacks this Application as defective for the following reasons;-

(i) **That the substantive parties to the suit are deceased;**

(ii) **The Advocates previously appearing for the deceased Plaintiff have not been served with the Application in which leave is sought to replace them;**

(iii) **That the orders sought are distinct and ought to be applied for through separate Applications;**

And

(iv) **That the witness is not a party to this matter and is not seeking leave to substitute the deceased Defendant.**

6. The Court is therefore urged to strike out the Application with costs. On the merits of the Application, the witness contends on advice of his Counsel that no sufficient basis has been laid for extension of the period of validity of the Decree. It is pointed out that the Deceased Defendant had objected to execution of the Decree *vide* **Kabarnet Probate and Administration Cause No. E007 of 2023** on the basis of the statute of limitation among other grounds.
7. Renison Kibet Seguto put in a rejoinder by way of a further affidavit, reiterating his averments. It is stated that the Deceased Defendant's Advocates were served with the Application and a response filed.
8. Regarding the Objection filed in the **Kabarnet Succession Cause No. E007 of 2023**, the witness states that those are different proceedings and the deceased's Plaintiff's family was merely protecting its interest in the land as per the court's Decree. It is contended that the

Objection Proceedings do not negate the court's Decree in this suit.

9. Learned Counsel for the parties filed written submissions which I have perused against the Application and the record. The suit relates to a dispute as to ownership of land. The suit had been heard and a Decree dated 14/5/1993 was issued. The Decree was issued by the High Court whose jurisdiction then extended to land disputes. Pursuant to **Article 162 (2) (b) of the Constitution of Kenya 2010**, however, Parliament has enacted the **Environment and Land Court Act** that establishes a specialized court known as the Environment and Land Court to hear and determine disputes relating to the environment, the use and occupation of, and title to land.
10. In the premises, this court does not have jurisdiction to entertain the matter any further and will not determine the Application on its merits. Instead, it is directed that the file be transferred to the **Environment and Land Court at Kabarnet**. No order is made as to the costs of the Application.

J. M. NANG'EA - JUDGE.

Ruling delivered virtually this 27th day of April, 2026.

In the presence of:

Plaintiff's Advocate, Ms Rono for Mr. Tarigo.

Defendant's Advocate, Mr. Kipnyekwei.

Court Assistant (Jeniffer)

J.M. NANG'EA - JUDGE.

Original