



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KERUGOYA

ELC CASE NO. 105 OF 2016

**MUNUBE NGONDI MAGU (Suing As The Legal Representative Of
The Estate Of GLADYS WAMBETI MUNUBE (DCD)...PLAINTIFF**

VERSUS

MOSES MWANGI.....1ST DEFENDANT

ETHAN MURIITHI.....2ND DEFENDANT

(Sued As Chairman And Secretary Respectively Of NGUKA SWAMP)

EZEKIEL GATHURA.....3RD DEFENDANT

JEREMIAH MURIITHI.....4TH DEFENDANT

EMMAH WANJIRA KAGETE.....INTENDED DEFENDANT

AND

MARY WAMBURA MBOI.....APPLICANT

RULING

This ruling is premised on the application dated 23rd October 2018 brought under *Order 1 Rule 10, Order 24 Rule 4 & 7 CPR and Section 18 CPA*. The applicant is seeking the following two (2) orders:

- 1. That this Court do revive this suit and substitute the deceased plaintiff with MARY WAMBURA MBOI the Applicant herein.**
- 2. That this Court do transfer this suit to Senior Principal Magistrate Wanguru Law Courts for hearing and determination.**
- 3. That costs be provided for.**

FIRST APPLICANT'S CASE BY MARY WANJIRA

The applicant has filed an affidavit in support and also grounds apparent on the face thereof. From the supporting affidavit, the applicant deposed that the plaintiff MUNUBE NGONDI MAGU (deceased) died on 28th June 2017 during the subsistence of this case. On 11th September 2018, she was issued with letters of Administration for his Estate. She further stated that she had requested the beneficiaries of his Estate to file succession but refused. She believes that unless this application is allowed, the Estate will suffer. She urged that no prejudice will be suffered by the Respondent.

She further deposed that she was the wife of one ELIJAH KAGETE MUNUBE (deceased) who was the licensee of plot Numbers 170, 173, 709, 93, 778, 931, 945 and Village Plot No. 28, 38 and 47 Nguka Swamp which were surrendered to Gladys Wambeti Munube by her late husband Elijah Kagete Munube.

SECOND APPLICANT'S CASE

That application is opposed with a replying affidavit sworn by one Emma Wanjira Kagete who deponed that she is the only wife of Elijah Kagete Munube (deceased) who died on 24th March 2009. She stated that the plaintiff in this case who is her father in-law died on 27th June 2017. She stated that the applicant is an impostor who first attempted to impose herself when she filed SRMCC No. 45 of 2009 (Wanguru) which was dismissed after she was found to be an impostor. She further deponed that she married the deceased Elijah Kagete Munube under Kikuyu Customary Law and were blessed with four (4) children. She said that her late husband never married a second wife.

ANALYSIS AND DETERMINATION

There are two applications for determination in this matter dated 23rd October 2018 and 7th February 2019. The first application is by the plaintiff while the second application is by the defendant. The plaintiff is seeking an order to revive this suit and to be granted leave to substitute the deceased Mary Wambura Mboi. The plaintiff also wants this suit transferred to Wanguru Magistrate's Court for hearing and final determination.

The defendant on the other hand is seeking to be enjoined as a party to this suit. Both applicants are each claiming to be the widow to the late Munube Magu Ngondi (deceased). The applicant in the first application has attached a copy of a limited grant issued in the Magistrate's Court Succession Cause No. 34 of 2016 (Kerugoya). The applicant in the second application is challenging authenticity of the limited grant issued to the applicant in the first application stating that the same was obtained by false pretences.

I have considered the two applications and the rival submissions. The limited grant issued to the applicant in the first application has not been revoked or annulled. The grant was issued limited only for purposes of filing suit. Since the applicant in the first application has been issued a limited grant to file a suit which has not been revoked or annulled, I find that her application to revive this suit and be substituted is merited. The same is hereby allowed. The application by Emma Wanjira Kagete to be enjoined as a party on grounds that she is a widow to the late Munube Ngondi Magu (deceased) is also merited. The second application by the said Emma Wanjira Kagete is therefore allowed. Consequently, Emma Wanjira Kagete is enjoined as the 5th defendant in this suit. The following orders are issued:

- 1. An order be and is hereby issued reviving this suit and substituting Munube Magu Ngondi (deceased) with Mary Wambura Mboi.**
- 2. Emma Wanjira Kagete is enjoined in this suit as 5th defendant.**
- 3. The 5th defendant, Emma Wanjira Kagete is granted leave to file defence to the plaintiff's claim.**
- 4. Mention on 30th October 2019 for further directions.**

READ, DELIVERED and SIGNED in open Court at Kerugoya this 20th day of September, 2019.

E.C. CHERONO

ELC JUDGE

20TH SEPTEMBER, 2019

In the presence of:

1. Mr. Maina Kagio holding brief for Ann Thungu

2. Emma Wanjira - present

3. Court clerk - Mbogo++