

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

ELC MISC. APPLICATION NO. 40 OF 2019

LAWRENCE KINYUA MWAI.....APPLICANT

VERSUS

PATRICK MWORIA.....RESPONDENT

RULING

1. This matter emanates from a Notice of Motion dated 12th August 2019 where the applicant seeks that this honorable court orders the production of the death certificate and burial permit of the late Zakaria Nkabu and that costs of the application be provided for.
2. The grounds on which the application is premised upon are set out in the body of the Motion and the supporting affidavit of the applicant sworn on 12th August 2019. **I have found it necessary to reproduce the contents of the aforementioned affidavit in a verbatim manner as follows;**

“That I am the applicant here and hence capable of swearing this affidavit. That my name is Lawrence Kinyua Mwai, residing at Nyariginu farm, Umande Daiga location, Laikipia East Sub-county, Laikipia county. That the defendant/respondent Patrick Mwororia is the son of the late Mwebia Nkabu. That the late Mwebia Nkabu is the immediate defendant/respondent of this case. That Patrick Mwororia is the grand child of the immediate deceased Mwebia Nkabu and grandson of Zakaria Nkabu the former named as 2nd defendant. That Patrick Mwororia is the defendant of H.C.C case/ELC no. 177 of 2017. That Patrick Mwororia became the H.C.C case/ELC no. 177 of 2017 after the death of his late father Mwebia Nkabu. That Mwebia Nkabu had taken over the death of his late father Zakaria Nkabu. That late Mwebia Nkabu had taken over of the suit land after death of his father Zakaria Nkabu. That Mwebia Nkabu was appointed by the court on 13.6.1996. After the court was alerted of the death of his father Zakaria Nkabu on attached marked L.K.M. 1 and was appointed to replace his father in the H.C.C case no. 120 of 1988 and later was changed to H.C.ELC no. 177/2017. That his case was consolidated with H.C.C.C No. 141 of 1988. That the H.C.H no. 120/1988 the defendant was the Zakaria Nkabu. That H.C.C.C No.141 of 1988 at Meru. The defendant was Muita Kabaragu who later also died and was replaced by his son Kabaragu Muita. That both defendants Zakaria Nkabu and Muita Kabaragu are now Deceased, their sons were appointed to replace their deceased fathers – in these cases H.C.C 120/88 and H.C.C 141/88 in Meru High Court. That before they had died the suit case was consolidated together for purpose of being taken for arbitration at Nakuru to be heard by the P.C, of RVP Nakuru their sons were appointed to replace them. That before these civil cases were determined both defendants died. That the civil H.C.C.C no. 120 of 1988 was taken or succeeded by their sons Mwebia Nkabu and Kabaragu Muita for H.C.C.C no. 141 of 1988 both cases in Meru High court. That afterwards the Mwebia Nkabu died before the case was determined. That Patrick Mwororia have succeeded his deceased father Mwebia Nkabu. That essential documents are needed in Meru High court H.C.C.C No. 120 of 1988 and H.C.C.C141/1988 has changed to Meru ELC case no. 177/2017 both are heard simultaneously in Meru H.C.C.C/ELC 177/2017. That since you Mwororia Mwebia you have been appointed to take over your deceased father Mwebia Nkabu you can easily produce these two documents needed in Meru Court. That since you been appointed the defendant of H.C.ELC No. 177 of 2017, you are in good manner to produce the wanted and essential documents of the deceased, late Zakaria Nkabu to help this honourable court to reach to deliver and research to give justice without any doubt to its judgments. That the applicant here in has been forced to request and apply to this honourable court for orders. The death certificate of Zakaria Nkabu and the unknown burial permit to be produced in this honourable court. For it will reveal to which date the deceased died to notice of motion and its affidavit. Written by Zakaria Nkabu and Mwebia Nkabu attached marked LKM2 written 5.5.2010 by Zacharia Nkabu and Mwebia Nkabu, commissioner – Joash Ondieki attached marked LKM 3 written 24.6.2011 by Zakaria Nkabu commissioner Joash Ondieki, LKM 4 written 17.2.2014 by Zakaria Nkabu and Notice of Motion and their affidavits commissioned by John Muthoni. That the false commissioned written above, I request humbly this honourable court to take a strong action to punish them strongly. That it is interest of this honourable court to be fed with any helping information to give proper, accurate and considerable determination and to come to the considered judgment. That death certificate and burial permit of late Zakaria Nkabu are compulsory to be brought to this honourable court and/apply for orders to this honourable court to these (2) two documents to be produced in this honourable court to help the ongoing orproceeding, High Court ELC 177 of 2017 as marked S.O.G to hear first this H.C Mis application No..... 2019. That in the same application to be marked ELC 177 of 2017 as S.O.G (Stood over generally) to pave way this application to be heard first”.

3. The issue for determination is *whether to warrant the production of the death certificate and burial permit of the late Zakaria Nkabu.*

4. First and foremost, before a court makes a determination on any matter it needs to establish whether it has jurisdiction. Jurisdiction is everything. Without it, a court has no power to make one step. It has to down its tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction. See **Owners of the Motor Vessel “Lillian S” v Caltex Oil (Kenya) Ltd [1989] KLR 1.**

5. In this case the applicant seeks production of the death certificate and burial permit for he seems to challenge the legitimacy of one of the parties in the ELC Case No. 177 of 2017. He tends to question the issue of *locus standi* relating to ELC Case No. 177 of 2017. Accordingly, this issue ought to be raised in that suit as it pertains to the *locus standi* of parties in that particular suit. This court cannot go ahead and interfere in an ongoing suit through this miscellaneous application.

6. Accordingly, I am of the view that the application is unmeritorious, the same is hereby dismissed with no orders as to cost.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS 13TH DAY OF NOVEMBER, 2019 IN THE PRESENCE OF:-

C/A: Kananu

Applicant

HON. LUCY. N. MBUGUA

ELC JUDGE