



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT KERUGOYA

ELC CASE NO. 207 OF 2014

JULIUS GICHOBI GITHAIGA

JANET WANGECHI GICHOBI.....PLAINTIFFS

VERSUS

JONATHAN NJUKI GITHAIGA.....DEFENDANT/DECEASED

AND

PHILLIS WANJIKU NJUKI.....SUBSTITUTE/DEFENDANT

RULING

The defendant herein **JONATHAN NJUKI GITHAIGA** is deceased and **JANET WANGECHI GICHOBI** who has authority to plead and act in this suit on behalf of her father **JULIUS GICHOBI GITHAIGA**, the plaintiff herein, has filed a Notice of Motion dated 2nd August 2017 seeking to substitute the deceased defendant with his wife **PHILLIS WANJIKU NJUKI**.

The application is opposed and grounds of opposition have been filed on the ground that no person has been appointed as a legal representative of the deceased defendant who can be substituted in his place.

Order 24 Rule 4 (1) of the Civil Procedure Rules provides as follows:

“Where one of two defendants dies and the cause of action does not survive or continue against the surviving defendant or defendants alone, or a sole defendant or sole surviving defendant dies and the cause of action survives or continues, the Court, on an application made in that behalf shall cause the legal representative of the deceased defendant to be made a party and shall proceed with the suit” Emphasis added

A legal representative is defined in Section 2 of the ***Civil Procedure Act*** as:

“..... a person who in law represents the Estate of a deceased person and where a party sues or is sued in a representative character, the person on whom the Estate devolves on the death of the party so suing or sued”.

Section 2 of the Law of Succession Act on the other hand defines a ***personal representative*** as:

“..... the executor or administrator of a deceased person”.

An **administrator** is defined in the same provision as:

“..... a person to whom a grant of letters of administration has been made under this Act”

In the circumstances of this case, it is clear that the Applicant wishes to substitute the deceased defendant with his wife **PHILLIS WANJIKU NJUKI**. However it is also clear that the said **PHILLIS WANJIKU NJUKI** has not taken out any limited Grant of letters of Administration nor a full Grant of letters of Administration and neither is she an executor of her late husband’s Estate. She cannot therefore be substituted in place of the deceased defendant – **TROUISTIK UNION INTERNATIONAL & ANOTHER VS MBEYO & ANOTHER 1993 K.L.R 230**. See also **VIRGINIA EDITH WAMBOI VS JOASH OCHIENG OUGO & ANOTHER 1982-88 1 K.A.R**. In the circumstances, and until she is appointed as the legal representative of the Estate of the deceased, **PHILLIS WANJIKU NJUKI** cannot be substituted in place of the deceased defendant. She lacks the necessary locus.

The up-shot of the above is that the Notice of Motion dated 2nd August 2017 lacks merit. It is accordingly dismissed with no order as to costs.

B.N. OLAO

JUDGE

26TH JANUARY, 2018

Ruling delivered, dated and signed in open Court this 26th day of January, 2018 at Kerugoya

Ms Kiragu for Mr. Kagio for Defendant present

Applicant present.

B.N. OLAO

JUDGE

26TH JANUARY, 2018