



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT OF KENYA
AT NAKURU
ELC NO. 276 OF 2016
ZACHARIA THIONG'O WARIIRE.....PLAINTIFF
VERSUS
EVANS KINGORI GATHEMA1ST DEFENDANT
NDEGWA KINGORI2ND DEFENDANT
AND
SAMUEL NDEGWA KINGORIAPPLICANT
RULING

(Application for substitution of deceased 1st defendant; application allowed) .

1. The application before me is that dated 12 September 2017 filed by Samuel Ndegwa Kingori, seeking to be substituted for the 1st defendant, who is said to be deceased. The application has been filed pursuant inter alia to the provisions of Order 24 Rules 1 and 2.

2. By way of background, this case was instituted through a plaint which was filed on 26 July 2016. In the plaint, the plaintiff pleaded that vide an agreement dated 4 December 2001, the 1st defendant (the deceased), sold to him the land parcel Nakuru Municipality Block 26/190 and the consideration was fully paid. It is averred that the plaintiff then became registered as proprietor and was duly issued with a title deed on 10 December 2001. It is pleaded that in the month of July 2016, the deceased and the 2nd defendant, who is his son, trespassed into the suit land and started putting up structures. In the suit, the plaintiff has sought orders inter alia that he be declared the owner of the suit land, an order of eviction, and an order to permanently restrain the defendants from the suit land.

3. I have not seen a defence filed, but from a replying affidavit sworn by the deceased 1st defendant on 8 August 2016, in response to an application for injunction, the deceased refuted having sold the suit land to the plaintiff and he denied having signed any document to transfer the suit land to the name of the plaintiff. It appears as if the deceased died shortly after swearing this affidavit, for annexed to the application, is a Certificate of Death which indicates that he died on 16 September 2016.

4. Through this application, the applicant, who appears to be the 2nd defendant, wishes to represent the estate of the deceased and has applied to be substituted for the deceased 1st defendant.

5. The applicant has displayed a grant of letters of administration ad litem, issued on 16 October 2017, indicating that he has been appointed to represent the estate of the deceased so as to defend a suit, which I presume is this suit.

6. The cause of action clearly survives the death of the 1st defendant and can be continued against his estate. I therefore have no reason to decline this application and I allow it. The applicant is hereby substituted for the deceased 1st defendant and may continue this suit on behalf of his estate.

7. I make no orders as to costs.

8. It is so ordered.

Dated, signed and delivered in open court at Nakuru this 21ST day of February 2018.

JUSTICE MUNYAO SILA

ENVIRONMENT & LAND COURT AT NAKURU

In presence of : -

Ms. Gikonyo holding brief for Mr. Ngure for the applicant.

Ms. Mathenge present for the plaintiff.

Court Assistant :Nelima Janepher.

JUSTICE MUNYAO SILA

ENVIRONMENT & LAND COURT AT NAKURU