



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

ELC. PET NO. 14 OF 2013

SIBOTI FARMERS CO-OPERATIVE

SOCIETY LIMITED.....PETITIONER/APPLICANT

VERSUS

HON. ATTORNEY GENERAL.....1ST RESPONDENT

THE CHIEF LAND REGISTRAR.....2ND RESPONDENT

MERCIA MULIRO.....3RD RESPONDENT

WESAKULILA FARM LIMITED.....4TH RESPONDENT

AND

MUKASA MWAMBU MULIRO.....RESPONDENT

RULING

1. The Notice of Motion dated **12/6/2018** seeks that the court be pleased to substitute the deceased administrator herein (**Mercia Muliro**) with **Mukasa Mwambu Muliro** who has taken Letters of Administration in respect of the deceased administratrix. It further sought leave be granted to plaintiff to amend the plaint to reflect the name of Mukasa Mwambu Muliro as the 3rd defendant herein and that costs of this application be in the cause.
2. The applicant's grounds for the application are that the 3rd defendant herein died on the **24th September, 2015**; that the Letters of Administration in respect of Mercia Muliro (deceased administrator) were issued to Mukasa Mwambu Muliro on the **6th June, 2018**; that the suit between the deceased administrator and the plaintiff herein is still pending before this court and hence need for substitution to allow the same to proceed for hearing and determination and that there will be need to amend the petition to reflect the name of Mukasa Mwambu Muliro as the 3rd defendant.
3. The application is supported by the affidavit of Timothy Masika Wanyama the current chairman of the petitioner herein sworn on **12th June, 2018**.
4. In reply to the application the respondent (Mukasa Mwambu Muliro) filed a replying affidavit sworn on **19/6/2018** and filed in court on the same date. He avers that Mercia Muliro the administrator of the estate of the late Henry Pius Masinde Muliro died before completion of the administration of the estate, that she had been sued in her capacity as the administrator to that estate, and that the respondent is therefore not the proper person to be enjoined as he allegedly has no capacity to represent the estate of the late Henry Pius Masinde Muliro as he has not been appointed to so act. He also terms the suit as abated.
5. The defendant filed supplementary affidavit sworn on **13/7//2018** by one Timothy Masika Wanyama and filed on **16/7/2018**. In that affidavit he avers that in the citation proceedings in **P&A Cause No 12 of 2016**, the court directed the respondent to take up and institute the appropriate proceedings seeking grant of letters of administration over the estate of Mercia Muliro within **30 days of 18/5/2017**.
6. The petitioner filed his submissions on **30/7/2018**. I have perused through the court record in this matter and found no submissions filed on behalf of the respondent.
7. It would appear from the title to that succession cause that it was the main cause in which Mercia Muliro has sought and obtained a Grant in respect of the estate of the late Henry Pius Masinde Muliro. Why no citation was made in respect of the late Mercia Muliro instead of the

late Henry Pius Masinde Muliro is not clear.

8. I am of the view that since the property in the land was originally owned by the deceased, the late Henry Pius Masinde Muliro, it is incumbent upon the applicant to demonstrate that the land devolved substantially to Mercia Muliro as proprietor and not as a trustee or administrator in order for the application herein to have merit.

9. The applicant has not done so. Without that evidence, the position I take is that Mercia Muliro was only an administrator of the estate of the late Henry Pius Masinde Muliro and upon her demise another administrator has to be appointed in the proper manner in her place before any further distribution of the estate of the late Henry Pius Masinde Muliro can be undertaken. Since the citation was sought against the respondent in respect of Mercia Muliro's estate, I find that the instant application has no merit and I hereby dismiss it with costs.

Dated, signed and delivered at Kitale on this 25th day of September, 2018.

MWANGI NJOROGE

JUDGE

25/9/2018

Coram: Before Hon. Mwangi Njoroge, Judge

Court Assistant - Picoty

N/A for the plaintiff

N/A for the defendant

COURT

Ruling read in open court.

MWANGI NJOROGE

JUDGE

25/9/2018