



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAKURU

ELC NO.146 OF 2016

**JACOB NDIBA NGUGI (Suing as the legal representative of the Estate of
the late NGURE RARIGA MUIGAI).....PLAINTIFF**

VERSUS

**JAMES MBUGUA KAMAU THE REGISTERED TRUSTEES OF THE
NEW LIFE GOSPEL CHURCH & 75 OTHERS.....DEFENDANTS**

RULING

(Application for joinder as co-plaintiff; suit having been filed by applicant's husband but on behalf of the estate of his late father; plaintiff thus filing suit as legal representative of the deceased's estate; plaintiff disappearing without trace; applicant being wife to plaintiff and wanting to continue suit as co-plaintiff; applicant has no locus a she needs to have letters of administration to sue on behalf of the estate of the deceased; application dismissed).

1. The application before me is that dated 6 July 2018 filed on behalf of the plaintiff. It seeks orders to have the plaint amended so as to include one Sheela Daina Wanjiru as 2nd plaintiff; an extension of the validity of summons to enter appearance, and an extension of time for service upon the defendants. The application is based on the grounds inter alia that the plaintiff has gone missing and that unless the plaint is amended to include his wife as the 2nd plaintiff, the suit will remain in a limbo. It is averred that the plaintiff's wife has a beneficial interest in the property.

2. By way of background, the suit itself was filed on 28 April 2016 by one Jacob Ndiba Ngugi who filed the suit on behalf of the estate of Nguge Rariga Muigai (deceased). It was pleaded that the deceased was the registered proprietor of the land parcel Naivasha/Mwichiringiri Block 4/4056 and that he obtained title to it in the year 1987. He died on 23 May 2002, and the plaintiff filed a succession cause No. 113 of 2006 in Naivasha Law Courts and was granted letters of administration on 1 March 2007. The grant was confirmed on 18 October 2007 which left all the properties of the deceased in his possession. In November 2015, it is pleaded that the plaintiff's wife, Sheela Daina Wanjiru, went to register a caution on this land and discovered that it was registered in the name of James Mbugua Kamau, who was in the original plaint, sued as the sole defendant. The plaintiff did further investigations and found out that the title had been subdivided into the land parcels No. 16250 to 16336. It was pleaded that all this was done by fraud, as the said James Mbugua Kamau, is a stranger to the estate of the deceased.

3. The affidavit in support of this application is sworn by Sheela Daina Wanjiru. She has deposed that she is the wife of Jacob Ndiba, the plaintiff in the case. She has deposed that her husband attended court on 16 February 2017 and thereafter disappeared, and to date, his whereabouts are unknown. She has pointed out that the 7 years required before a missing person can be presumed dead have not yet lapsed and she cannot therefore obtain letters of administration for his estate. She has averred that she has a beneficial interest in the suit property as wife to the plaintiff.

4. The defendants are yet to enter appearance in this suit and the application is not opposed.

5. However, I am unable to allow it as presented. In as much as the applicant wants to come into the case as the 2nd plaintiff, I am not persuaded on her locus. The plaint shows that this suit has been commenced on behalf of the estate of Nguge Rariga Muigai, who is deceased. Jacob Ndiba Ngugi, who filed the case did not file the case on his own behalf but on behalf of the estate of a deceased person. This case is not therefore for the personal benefit of Mr. Ndiba, but it is for the benefit of the estate of the deceased. That being the case, for a person to come into the suit, that person must also be acting on behalf of the estate of the deceased. If it is the case that Jacob Ndiba has disappeared, and his whereabouts are unknown, then the best avenue is for the applicant herein to apply to be issued with a limited grant of letters of administration in respect of the estate of Nguge Rariga Muigai, for purposes only of pursuing this case. It is only after obtaining such grant that she can be in a position to agitate any case on behalf of the estate of the deceased. The fact that she is wife to Jacob Ndiba,

does not by itself, give her locus to sue on behalf of the estate of the deceased. It is trite law that one needs to be an appointed administrator in order to sue on behalf of a person who is deceased.

6. For the above reasons, I am unable to allow the application in so far as it intends to have Sheena Daina Wanjiru, to be a plaintiff in this suit. On the other prayers for extension of the validity of summons, and extension of time within which to serve the defendants, the same is allowed. I extend by a further 6 months the validity of the summons to enter appearance and direct that service upon the defendants be effected within 6 months from today.

7. I make no orders as to costs.

8. Orders accordingly.

Dated, signed and delivered in open court at Nakuru this 18TH day of October 2018.

JUSTICE MUNYAO SILA

ENVIRONMENT & LAND COURT AT NAKURU

In presence of :-

Ms.Kabalika holding brief for Ms. Nancy Njoroge for the applicant.

No appearance on the part of the respondents.

Court Assistants: Nelima Janepher

Carlton Toroitich.

JUSTICE MUNYAO SILA

ENVIRONMENT & LAND COURT AT NAKURU