



REPUBLIC OF KENYA



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**Wang'odu (Administrator ad litem to the Estate of Leah Watetu
Wamwangi (Deceased) v Mwangi & 14 others (Environment & Land
Case 54 of 2018) [2024] KEELC 148 (KLR) (25 January 2024) (Ruling)**

Neutral citation: [2024] KEELC 148 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NYERI

ENVIRONMENT & LAND CASE 54 OF 2018

JO OLOLA, J

JANUARY 25, 2024

BETWEEN

**STANLEY WANG'ONDU (ADMINISTRATOR AD LITEM TO THE ESTATE OF
LEAH WATETU WAMWANGI (DECEASED) APPLICANT**

AND

JOSEPH MUCHIRI MWANGI 1ST DEFENDANT
DAVID NDEGWA MWANGI 2ND DEFENDANT
MOSES KAMAU MWANGI 3RD DEFENDANT
STEPHEN MAINA WAIRAGU 4TH DEFENDANT
ANN MUTHONI KING'ORI 5TH DEFENDANT
DAVID MUGWE MACHARIA 6TH DEFENDANT
PETER KAMUNYA MWANGI 7TH DEFENDANT
CHARLES KIMANI MAINA 8TH DEFENDANT
ISAAC MUNENE NYAMBURA 9TH DEFENDANT
LIVING OASIS IN THE WILDERNESS CHURCH 10TH DEFENDANT
EDDAH NYANGUTHII NYAGO 11TH DEFENDANT
PERMANENT SECRETARY- TREASURY 12TH DEFENDANT
LAND REGISTRAR NYERI 13TH DEFENDANT
DISTRICT SURVEYOR – NYERI 14TH DEFENDANT
THE ATTORNEY GENERAL 15TH DEFENDANT



RULING

1. By the Notice of Motion herein dated 3rd February 2023, Stanley Wang'ondu suing as the administrator of Leah Watetu Wamwangi (the Applicant) urges the court to be pleased to review, vary and/or set aside its ruling delivered herein on 2nd February 2023. The application which is supported by an Affidavit sworn by the Applicant is premised on the grounds that:-
 - (i) The court on 3rd February 2023 dismissed the Applicant's application dated 2nd February 2022 on the grounds that there was no evidence that the Applicant had capacity to sue on behalf of the mother's estate;
 - (ii) There exists a mistake and/or error apparent on the face of the record which warrants the granting of the orders sought as the Applicant sent a complete application with an annexed grant of letters ad litem, but the same was erroneously omitted from the stamped documents at the court registry;
 - (iii) The Applicant did not realize this omission on the part of the registry until it was too late; and
 - (iv) It is in the interest of Justice that the said application be allowed.
2. A number of the Defendants are opposed to the application. In his Replying Affidavit sworn on 20th April 2023, Peter Kamunya Mwangi (the 7th Defendant) avers that the Applicant is his brother and that Leah Watetu was his mother. The 7th Defendant further avers that their family has never consented to the Applicant being the personal representative of their deceased mother's estate and that the grant of letters ad litem attached to the application was obtained by way of false information.
3. The 7th Defendant avers that the Applicant should give evidence and produce the consent signed by the family members and the chief that enabled him to obtain the grant ad litem as the family never consented to the same.
4. The 7th Defendant further avers that he was present when his father gave the suit land to the Living Oasis in the Wilderness Church and that there was no good reason for allowing the Applicant's application.
5. Isaac Munene Nyambura (the 9th Defendant) is equally opposed to the application. He asserts that the application should be dismissed with costs as the Applicant obtained the said grant ad litem by way of false information as no family member consented to the same.
6. The Living Oasis in the Wilderness Church (the 10th Defendant) is also opposed to the application. In a Replying Affidavit sworn on its behalf by its Pastor-in-charge Peter Mbugua Chege, the 10th Defendant avers that the Plaintiff herein passed away on 1st February 2020 and that the suit abated on 31st January 2021. The 10th Defendant further asserts that the Applicant acquired the letters of administration through false information as the family of the deceased never gave their consent thereto.
7. I have carefully perused and considered the application as well as the response thereto. I have similarly perused and considered the submissions and authorities placed before the court by the Learned Advocates representing the parties herein.



8. By his application before me, the Applicant urges the court to be pleased to review, vary and/or set aside its Ruling delivered herein on 2nd February 2023. The Applicant's application is premised inter alia, on Order 45 Rule 1 of the Civil Procedure Rules which provides as follows:-

“ 1

- (1) Any person considering himself aggrieved-
- (a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred; or
- (b) by a decree or order from which no appeal is hereby allowed, and who from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or the order made, or on account of some mistake or error apparent of the face of the record, or for any other sufficient reason, desires to obtain a review of the decree or order;

may apply for a review of Judgment to the court which passed the decree or made the order without unreasonable delay.”

9. Arising from the foregoing, the power of review can be exercised on the application of a person on the discovery of a new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the order was made. The power can also be exercised on account of some mistake or error apparent on the face of the record or for any other sufficient reason.
10. In the matter before me, the Applicant had by an application dated 3rd February 2022 sought orders as follows:-
- (1)
- (2) That the Honourable Court be pleased to revive the Applicant's suit against the Defendants;
- (3) That upon the revival of the suit, this Honourable Court be pleased to extend the time by which the Plaintiff/Applicant may apply for substitution of the Defendants;
- (4) Than upon such leave being granted, this Honourable Court be pleased to substitute Leah Watetu (deceased) with Stanley Wang'ondy who is the son and administrator ad litem to the estate of the said Leah Watetu)deceased; and
- (5) That the costs abide the main cause.
11. Having considered the said application and in the Ruling delivered herein on 2nd February 2023, this court dismissed the same on account that the Applicant had not availed any evidence that he had applied for and was issued with a Limited Grant ad litem or a Grant of Letters of Administration to enable him to substitute his mother in the suit.



12. By this present application, the Applicant has demonstrated that as at the time he filed the said application he had indeed been issued with a Limited Grant of Letters of Administration ad litem on 11th November 2021 in Nyeri Chief Magistrates Probate and Administration Cause No. 616 of 2021. The Applicant has explained that the said Grant had been attached to his earlier application but were omitted by some mistake at the court's registry.
13. While the Defendants are opposed to the application on the grounds that the Grant was not obtained with the consent of the Applicant's family that is not a matter for this court and must be dealt with elsewhere.
14. As matters stand now, the Applicant has demonstrated that he has been clothed with the Locus Standi to substitute the deceased Leah Watetu Wamwangi in these proceedings.
15. In the premises, I hereby allow the Motion dated 3rd February 2023 and grant the orders sought in the Applicant's earlier Notice of Motion dated 3rd February 2022. The Applicant has 30 days from today to effect any necessary substitutions.
16. The costs of this application shall be in the cause.

DATED, SIGNED AND DELIVERED AT NYERI THIS THURSDAY 25TH DAY OF JANUARY, 2024.

J. O. OLOLA

JUDGE

In the presence of:

Mr. Ndichu for the Applicant.

No appearance for the Respondents.

