



**REPUBLIC OF KENYA**

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**IN THE ENVIRONMENT AND LAND COURT AT CHUKA**

**CHUKA ELC CASE NO 08 OF 2017**

**FORMERLY MERU ELC CASE NO. 18 OF 2015**

**IN THE MATTER OF LIMITATION OF ACTIONS ACT CAP 22, SECTION 7, 37 & 38**

**AND**

**IN THE MATTER OF LAND REGISTRATION ACT NO. 3/2012, SECTION 28**

**AND**

**IN THE MATTER OF AN APPLICATION BY PAUL NDUBI NKOROI UNDER THE LIMITATION OF ACTION ACT THAT  
BE REGISTERED WITH 0.23 ACRES OUT OF LR: KIERA EAST MAGUTUNI/166**

**AND FOR A DECLARATION THAT THE APPLICANT BE REGISTERED WITH 0.23 ACRES OUT OF LR:KIERA EAST  
MAGUSTUNI/166**

**BETWEEN**

**PAUL NDUBI NKOROI.....APPLICANT**

**VERSUS**

**JUSTUS KIRIGIA M'IKIARA.....RESPONDENT**

**RULING**

1. This application is dated **8<sup>th</sup> November, 2018** and seeks orders that:

1. That the court do direct and order the land registrar to dispense with the production of the original title deed of LR; Kiera/E. Magutuni/3039 when implementing the court orders.
2. Felix Mpuhia Ndubi the applicant herein be substituted for Paul Ndubi Nkoroi (deceased) as the applicant in the instant originating summons.
3. Costs of this application be provided for.

2. The application has the following grounds:

- a) That the applicant is a son of Paul Ndubi Nkoroi (deceased).
- b) That Paul Ndubi Nkoroi died on 13<sup>th</sup> January, 2018.
- c) That the applicant is the holder of letters of administration ad litem in respect of the estate of the late Paul Ndubi.
- d) That the initial applicant in the instant O.S died before execution proceedings had commenced thereby stalling the suit to its logical conclusion.

- e) That there is need of the applicant being enjoined in this suit as a substitute for Paul Ndubi Nkoroi if this matter can proceed to execution.
- f) That the estate of Paul Ndubi cannot enjoy fruits of his successful litigation unless and until he is substituted with another person.
- g) That this application will not change the ratio decidedi of the suit as per the judgment of this court delivered on 31<sup>st</sup> July, 2017 and reviewed on 20<sup>th</sup> September, 2017.
- h) That no party stand (sic) to suffer any prejudice in the event that the orders sought are granted.

3. The application is supported by the affidavit of Felix Mputhia Ndubi which states:

**I, FELIX MPUTHIA NDUBI of P. O. Box 46 Magutuni** in the Republic of Kenya make oath and state as follows;

- 1. That I am the applicant herein well versed with the particulars of this suit and hence competent to make this oath.
- 2. That I am a son of Paul Ndubi Nkoroi (deceased) the original applicant in the instant O.S.
- 3. That Paul Ndubi Nkoroi died on 13<sup>th</sup> January, 2018 as evidence (sic) in the certificate of death (annexed and marked F.M. N. 1 is the certificate of death).
- 4. That I am the holder of letters of administration Ad Litem in respect of the estate of the late Paul Ndubi (annexed and marked F. M. N. 2 is the letters of administration Ad Litem).
- 5. That the initial applicant in the instant O.S. died before execution proceedings had commenced thereby stalling the suit to its logical conclusion.
- 6. That there is need of my being enjoined in this suit as a substitute for Paul Ndubi Nkoroi (deceased) if this matter will proceed to execution.
- 7. That the estate of Paul Ndubi Nkoroi cannot enjoy fruits of his successful litigation unless and until he is substituted with another person.
- 8. That this application will not change the ratio decidedi of the suit as per the judgment of this court delivered on 31<sup>st</sup> July, 2017 and reviewed on 20<sup>th</sup> September, 2017.
- 9. That it is unlikely that the respondent will ever surrender the original title deed of LR; Kiera/E.Magutuni/3039 hence the need of this court to order the land registrar do dispense with the production of the original title deed of LR; Kiera/E. Magutuni/3039 when registering what the initial applicant Paul Ndubi is entitled to.
- 10. That no party stands to suffer any prejudice in the event that the orders sought are granted.
- 11. That all which is deponed herein is true to the best of my knowledge, belief and information.

4. The application was heard on **11<sup>th</sup> November, 2018** when Mr. I. C. Mugo, the applicant's advocate, asked the court to allow prayer 1 only.

5. Regarding prayer No. 2, the court finds itself unable to grant it as it is functus official. I find that I cannot give an order to enjoin an applicant in an already concluded case.

6. I issue the following orders:

- a) Prayer 1 in the application is allowed.
- b) No costs are awarded.

7. It is so ordered.

Delivered in open court at Chuka this **11<sup>th</sup> day of December, 2018** in the presence of:

CA: Ndegwa

I.C.Mugo present for the Applicant

Justus Kirigia – Respondent - Absent

**P.M. NJORGE**

**JUDGE**