



**REPUBLIC OF KENYA**

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

**ELC NO. 86 OF 2014**

**HASSAN MOHAMED MATAN.....PLAINTIFF/APPLICANT**

**-VERSUS-**

**THE ESTATE OF NJOKI KANGETHE KORINGO**

**(DECEASED) .....1<sup>ST</sup> DEFENDANT**

**COUNTY SURVEYOR KAJIADO COUNTY.....2<sup>ND</sup> DEFENDANT**

**DISTRICT LAND REGISTRAR KAJIADO.....3<sup>RD</sup> DEFENDANT**

**RULING**

In his Application dated 16<sup>th</sup> April, 2015, the Plaintiff is seeking for the following orders:-

- 1. THAT the 1<sup>st</sup> Defendant’s name be struck out from these proceedings, and that the names of MARIA GATURU MAINA, AGNESS NJERI KOSHOPA and JOSEPH KOSHOPA be added as Co-Defendants as their presence before the Court is necessary to enable the Court effectually and completely adjudicate upon and settle all questions involved in the suit.**
- 2. THAT the Plaintiff be granted leave to further amend his Amended Plaintiff and Amended Notice of Motion both dated 15<sup>th</sup> September, 2014 and amended on 2<sup>nd</sup> December, 2014 as set out in the Draft Further Amended Plaintiff and Further Amended Notice of Motion herein annexed.**
- 3. THAT the Draft Further Amended Plaintiff and Further Amended Notice of Motion be deemed as duly filed and served.**
- 4. THAT the costs of this Application be provided for.**

The Application is based on the ground that the 1<sup>st</sup> Defendant does not have a representative in the form of either an Administrator or an Executor; that the error of suing the 1<sup>st</sup> Defendant as a natural person instead of her estate was a bonafide and genuine mistake and that the amendments will not in any way prejudice the Defendants.

According to the Affidavit of the Plaintiff, it is the children of the deceased who informed the court that the deceased died sometime back before the filing of the suit and that the children of the deceased have never taken out the letters of administration.

The Respondents did not file any response to the Application.

The Plaintiff's advocate filed submissions which I have considered.

This is the second time that the Plaintiff is seeking to substitute the 1<sup>st</sup> Defendant.

In his Affidavit, the Plaintiff deponed that the 1<sup>st</sup> Defendant died before the filing of the suit.

If that is so, then the suit as initially filed is a nullity. I say no because a suit can only be filed against a living person, or his legal representative(s).

Having admitted that the suit was filed against a dead Defendant, the issue of substitution does not arise. The Plaintiff's recourse is to file a suit against the people he alleges are trespassing on the suit land.

In the circumstances, I dismiss the Application dated 16<sup>th</sup> April, 2015 with costs.

It is so ordered.

**Dated and Delivered at MACHAKOS this 27<sup>TH</sup> day of JANUARY, 2017.**

**O. A. ANGOTE**

**JUDGE**