



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND

AT NYERI

ELC NO. 27 OF 2015

(Formerly NYERI HCC NO 123 OF 1994)

ELIJAH ITUGU KABIRU1ST PLAINTIFF

HANNAH NJERI.....2ND PLAINTIFF

JOHN MBUI CHOMBA.....3RD PLAINTIFF

JULIUS NDWIGA.....4TH PLAINTIFF

AGNES WANJIRU MURIITHI.....5TH PLAINTIFF

JOHNSON MUNENE.....6TH PLAINTIFF

GICHOBI KAARA.....7TH PLAINTIFF

KARANGI GATANDI.....8TH PLAINTIFF

MURIUKI RUITA.....9TH PLAINTIFF

JASON MWAI GICHIMBA10TH PLAINTIFF

JAMLECK MURIITHI MURAYA.....11TH PLAINTIFF

GEOFREY GACHOKI.....12TH PLAINTIFF

MICHAEL MBUTHIA.....13TH PLAINTIFF

MARTIN NGARI.....14TH PLAINTIFF

JOHANA NYAGA.....15TH PLAINTIFF

JOSEPH MURIMI16TH PLAINTIFF

FREDRICK MWAI17TH PLAINTIFF

PRISCILLAH WANGARI.....18TH PLAINTIFF

CHARLES MUGO.....19TH PLAINTIFF

HARUN MAINA20TH PLAINTIFF

CIRIAKA WANJIRU.....21ST PLAINTIFF

MURIUKI CUMARI.....22ND PLAINTIFF

ELIUD MURIUKI.....23RD PLAINTIFF

-VERSUS-

KANGURU GACHOKI.....1ST DEFENDANT

JOHN MWEA GACHOKI.....2ND DEFENDANT

KIRINYAGA COUNTY COUNCIL.....3RD DEFENDANT

KERUGOYA/KUTUS MUNICIPALITY COUNCIL....4TH DEFENDANT

AND

TABITHA MUTHONI GICHOBI)

SUSAN MUTHONI MWAI)

SAMUEL KINYUA MWAI)

BEATRICE WARUGURU).....APPLICANTS

RULING

1. Before the court for determination are three applications, brought by way of Chamber Summons dated **21st January, 2015**.
2. The first application by **Tabitha Muthoni Gichobi**, seeks that the court enlarges the time to enable her substitute the 7th Plaintiff (**Gichobi Kaara**). She also seeks that the 7th Plaintiff's suit be revived. In her affidavit sworn on **21st January, 2015**, she depones that the 7th Plaintiff died on 20th May, 2003 and she was appointed administrator of his estate pursuant to the certificate of confirmation of grant issued in Embu High Court Succession Cause No 403 of 2008.
3. The second application by **Beatrice Waruguru** is similar to the first one in nature and scope of prayers sought. The applicant also seeks for enlargement of time to enable her substitute the 1st Plaintiff (**Elijah Itugu Kabiru**), that the 1st plaintiff's suit be revived and that she be allowed to prosecute the 1st Plaintiff's case. In her affidavit sworn on even date, she depones that the 1st plaintiff died on 10th November, 2004 and she was appointed administrator of his estate pursuant to the certificate of confirmation of grant issued in Kerugoya High Court Succession Cause No 453 of 2014.
4. The third application seeks substitution of the 10th plaintiff with the following names: **Susan Muthoni Mwai** and **Samuel Kinyua Mwai**. Their joint affidavit in support was also sworn on 21st January, 2015. In that affidavit they depone that they have obtained letters of administration enabling them administer

the 10th plaintiff's estate vide Kerugoya High Court Succession Cause No 452 of 2014.

5. When this matter came for mention on **25th February, 2014**, before by brother **Ombwayo J**, both parties were represented. **Ms Kiragu** for the plaintiffs, informed the court that she would **"..... proceed with the surviving plaintiffs and withdraw the suit with respect to the deceased plaintiffs."** Mr **Rurige** had no objection.

The learned Judge then made the following order:

"By consent, the surviving plaintiffs to proceed with this matter. Leave is granted for witness statements to be filed within 21 days. Mention on 04/04/14."

6. The above consent order has not been reviewed or set aside. It is trite law that an order of the court is binding until the applicants apply for it to be reviewed or set aside. See the case of **Board of Trustees National Social Security Fund v Micheal Mwalo** [2015] eKLR, where the court of appeal held;

"The position is clearly set out in Setton on Judgments and Orders (7th Edn), Vol.1 pg 124 as follows-

"Prima Facie, any order made in the presence and with the consent of counsel is binding on all parties to the proceedings or action, and on those claiming under them...cannot be varied or discharged unless obtained by fraud or collusion, or by an agreement contrary to the policy of the court...; or if the consent was given without sufficient material facts, or in general for a reason which would enable the court to set aside an agreement."

7. For the reasons stated above, I find the applications before me must fail. Consequently, I strike out all three applications with no order on costs as the applications were undefended.

Dated, signed and delivered at Nyeri this 15th day of February, 2017.

L N WAITHAKA

JUDGE

In the presence of:

Ms Kiragu h/b for Ms Kimotho for the applicants

N/A for the 1st and 2nd defendants/respondents

N/A for the 4th defendant/respondent

N/A for the 3rd defendant

Court clerk - Esther