



**Gathuma v Mwangi & another (Environment & Land Case  
66 of 2016) [2025] KEELC 863 (KLR) (27 February 2025) (Ruling)**

Neutral citation: [2025] KEELC 863 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NYERI  
ENVIRONMENT & LAND CASE 66 OF 2016  
JO OLOLA, J  
FEBRUARY 27, 2025**

**BETWEEN**

**PETER NDUMIA GATHUMA ..... PLAINTIFF**

**AND**

**JOHNSON KAMAU MWANGI ..... 1<sup>ST</sup> DEFENDANT**

**ISAAC MAINA WAICHUNGO ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. By the Notice of Motion application dated 22<sup>nd</sup> July, 2024, Peter Ndumia Gathuma (the Applicant) prays for an order that this Honorable Court be pleased to substitute the Respondents herein in place of Watson Wachira Muriithi (deceased).
2. The application is supported by an affidavit sworn by the Applicant wherein he depones that the 1<sup>st</sup> and 2<sup>nd</sup> Respondents are the intended heirs of Watson Wachira Muriithi, the Defendant herein who passed away on 28<sup>th</sup> July, 2017. The Applicant asserts that the two Respondents have filed Nanyuki High Court Succession Cause No. 103 of 2017 wherein they seek a confirmation of Grant for the estate of the deceased.
3. But Johnson Kamau Mwangi and Isaac Maina Waichungo are opposed to the application. In their Replying Affidavit sworn on 7<sup>th</sup> October, 2024, the Respondents aver that the application is malicious and an abuse of the court process. They further aver that a similar application had been filed by the Respondent on 24<sup>th</sup> May, 2018 and that the same was dismissed on 25<sup>th</sup> October, 2018. The Respondents accuse the Applicant of misleading the court by failing to disclose that there was a codicil revoking the grant of 5 acres to himself.
4. The Respondents assert that in light of the Ruling of the court on 25<sup>th</sup> October, 2018, the Applicant's remedy lies in the Succession Court as this court is now Functus Officio.



5. I have carefully perused and considered both the application and the responses thereto.
6. By the application before the court, the Plaintiff/Applicant prays for an order that this court be pleased to substitute the name of the Defendant with that of the two Respondents. The Respondents are opposed to the substitution and aver that the Plaintiff's application is malicious and an abuse of the court.
7. From the record herein, it is apparent that the Plaintiff did institute this suit against one Wartson Wachira Mureithi seeking an order for the said Defendant to transfer a portion of land measuring 2.105 Ha to be hived out L.R. No. Marmanet/Melwa Block 1/1993 (Muhotetu) to the Plaintiff.
8. It is also apparent that the matter is yet to be heard and determined as a year after the suit was filed the said Wartson Wachira Mureithi passed away on 28<sup>th</sup> July, 2017 and was yet to be substituted to-date.
9. In case of the death of a Defendant in any proceedings before the Court, Order 24 Rule 4 of the Civil Procedure Rules provides as follows:
  - “(1) Where one of two or more Defendants dies and the cause of action does not survive or continue to the surviving Defendant or Defendants alone, or a sole Defendant or sole surviving Defendant dies and the cause of action survives or continues, the court, on an application made in that behalf, shall cause the legal representative of the deceased Defendant to be made a party and shall proceed with the suit.
  - (2) Any person so made a party may make any defence appropriate to his character as legal representative of the deceased defendant.”
10. In the matter herein, the Plaintiff has filed this present application seeking to have the two Respondents substituted for the deceased Defendant. In support of his case, the Plaintiff has annexed a Certificate of Grant of Letters of Administration Intestate issued to the two Respondents in Nanyuki Chief Magistrates Court Succession Cause No. 103 of 2017 on 3<sup>rd</sup> May, 2018.
11. The two Respondents do not deny that they have been appointed as the legal representatives of the estate of the Defendant. Instead they accuse the Plaintiff of failing to inform this court that there was a codicil revoking the grant of the 5 acres of land to the Plaintiff. Those are not in my view matters for this application. Those are matters that the two Respondents can raise in their defence as envisaged under Order 24 Rule 4(2) of the Civil Procedure Rules once they are substituted and made parties in this matter.
12. On the Respondent's contention that this court is functus officio given the Ruling delivered herein on 25<sup>th</sup> October, 2018, I was unable to find any basis for that conclusion. That Ruling concerned an application made by the Plaintiff to have an affidavit sworn by the 1<sup>st</sup> Respondent herein expunged from the record. As at the time, there was no application to substitute the 1<sup>st</sup> Respondent and the court did not then deal with the aspect of whether or not he was the legal representative of the Defendant capable of being substituted on the Defendant's behalf.
13. It follows that I am persuaded that there is merit in the Motion dated 22<sup>nd</sup> July, 2024 and I do hereby allow the same and substitute the Defendant's name with that of the two Respondents as the Defendants herein. The substituted Defendants shall have 14 days from today to file and serve any pleadings they deem necessary in the circumstances.
14. The costs of the application shall be in the suit.



**RULING DATED, SIGNED AND DELIVERED IN OPEN COURT AND VIRTUALLY AT  
MOMBASA THIS 27<sup>TH</sup> DAY OF FEBRUARY, 2025**

**J.O. OLOLA**

**JUDGE**

In the presence of:

- a. Ms. Firdaus Court Assistant.
- b. Mr. Peter Ndumia, the Plaintiff in person
- c. Mr. Muthee Advocate for the Respondents

