



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT NYERI

ELC NO. 10 OF 2012

NGUNJIRI MACHARIA 1ST PLAINTIFF

FRANCIS MWANGI MACHARIA 2ND PLAINTIFF

-VERSUS-

JOSEPH MWANIKI MACHARIA DEFENDANT

RULING

1. The application is dated **22nd September, 2016** brought under **Order 24 Rule 1 and 4** of the Civil Procedure Rules seeking to substitute the defendant Joseph Mwaniki Macharia(deceased).
2. The application is premised on the ground stated in the application and is supported by the affidavit of Agnes Waguthi Mwaniki sworn on **22nd September, 2016**. She depones that the defendant passed on on 8th September, 2015; that she is the wife to the deceased and that she is the intended legal representative of his estate and should therefore be enjoined in the suit.
3. The application is opposed through the replying affidavit of the 1st plaintiff Ngunjiri Macharia sworn on **15th June, 2017**. He depones that the application is bad in law having been filed after one year of the death of the defendant without leave of the court for extension of time. The defendant is said to have died on 8th September, 2015 but the current application was filed on 22nd September, 2016.
4. He further depones that the applicant has not obtained letters of administration to the estate of the deceased to enable her be substituted as a legal representative in this case.
5. It is the respondent's contention that an earlier application dated 15th January, 2014 and filed on 16th January, 2015 by the deceased seeking that the exparte judgment be set aside, abated on 9th September 2016, leaving nothing pending in this case. He states that following the judgment of this court, the suit property was subdivided into three portions as ordered by the court and the respondents have taken possession and occupied their respective portions. He prays that the application be dismissed with costs.
6. Exparte Judgment in this matter was granted in favour of the plaintiffs on 14th March, 2014. The defendant filed an application dated 15th January, 2015 seeking to have the exparte judgment set aside but he died before prosecuting the application.
7. The applicant (his wife) has now moved the court praying that she be substituted in his place. She has

not availed any letters of administration showing that she has been appointed by the court as the legal representative of the estate of Joseph Mwaniki Macharia in accordance with the law. Having failed to obtain the aforesaid letters, I find that the applicant lacks the *locus standi* to file this application which I strike out with costs to the respondent.

Orders accordingly.

Dated, signed and delivered at Nyeri this 23rd day of November, 2017.

L N WAITHAKA

JUDGE

Coram:

Mr. Gori for the applicant/defendants

Mr. Njuguna for the plaintiffs/respondents

Court assistant - Esther