



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LANDS COURT AT ELDORET

E&L CASE NO. 199 OF 2017

IRENE CHEPKIMOI CHESEREM.....PLAINTIFF

VERSUS

JOAN CHEROP.....1ST DEFENDANT

FRED KIPNGETICH.....2ND DEFENDANT

NATHAN KIPKOSGEI.....3RD DEFENDANT

RULING

This ruling is in respect of an application dated 24th August 2017 by the 2nd and 3rd defendants brought by way of Notice of Motion for orders that:

- a) The suit filed in court on 15th May 2017 be struck out on the grounds that the suit is against a deceased person.
- b) Costs of the application be provided for.

The plaintiff herein filed this suit contemporaneously with an application dated 15th May 2017 under certificate of urgency seeking for temporary orders of injunction. The matter was brought before the court but the court did not certify the same urgent as there was no urgency. The 2nd and 3rd defendants filed a preliminary objection and the current application for striking out of the entire suit. Counsel abandoned the preliminary objection and argued the application for striking out the suit on 19th October 2017.

It was Counsel's submission that suit is an abuse of the court process as it was instituted against a deceased person. She relied on the supporting affidavit of one NATHAN KIPKOSKEI the 3rd defendant herein. Miss Kuyaki submitted that the plaintiff sued the 1st defendant who passed away on 6/5/17 while the plaint was filed on 15/5/17. She stated that the 2nd and 3rd defendants are not legal representatives of the estate of the late JOAN CHEROP.

Miss Kuyaki Counsel for the 2nd and 3rd defendants submitted that section 82 of the Law of Succession Act gives powers to personal representatives to sue or to be sued against a claim of an estate of a deceased person. It was further her submission that the property in issue belongs to a deceased person whom the plaintiff claims to have been her husband.

Counsel referred the court to the case of **Mary Nanjala Muhalya v Ambrose Kipruto [2014] eKLR** where the court found that only a legal representative of the estate of a deceased person can be sued in

respect of that estate.

Analysis and determination

I have considered the application as well as the submissions by Counsel for the 2nd and 3rd defendants and I find that the issue for determination is whether a person who is not a legal representative of a deceased person can be sued in respect of the estate. The other issue is whether it is legal or proper for a plaintiff to sue a deceased person.

It is not in dispute that the 1st defendant is deceased having passed away on 6/5/17 as per the annexed death certificate to the supporting affidavit of the one Nathan Koskei the 3rd defendant. It is further admitted by the plaintiff/respondent that she did not know that the 1st defendant had passed on due to bad relationship with her. I also notice from the pleadings that the suit property belongs to the plaintiff's purported late husband one WILSON CHEPKEITANY.

The plaintiff does not describe or explain in what capacity she has sued the 2nd and 3rd defendants but from the grounds of the Notice of Motion, the plaintiff states on ground (d) that "the respondents have got their own share given to them by their late husband/father Wilson Chepkeitany." From this I can deduce that they are sued in their capacity as the sons of the 1st defendant who is deceased. The question is whether the defendants are the legal representatives of the estate of the late Wilson Chepkeitany or in what capacity do they appear in this suit. It seems the plaintiff just lumped them together with their late mother who is the 1st defendant.

I have looked at the pleadings and I have not seen anywhere where the defendants are recognized or described as legal representatives of the estate of the late Wilson Chepkeitany or the late Joan Cherop. It is trite law that if a party wants to sue the estate of a deceased person, he or she must sue the legal representatives of such estate.

Obaga J stated this in the case of **Mary Nanjala Muhalya v Ambrose Kipruto [2014] eKLR**

"A legal representative as defined in the Civil Procedure Act is equivalent to the definition of a personal representative as defined under the Succession Act Cap 160 Laws of Kenya. Section 3 of the Law of Succession Act defines "Personal representative" as "the executor or administrator as the case may be of a deceased person". Administrator in the same section is defined as "a person to whom a grant of letters of administration has been made under this Act". It is therefore clear that a legal representative is a person to whom a grant of letters of administration has been made under the Succession Act."

In this particular case the same has not been adhered to. This amounts to an abuse of the court process. It is also an abuse of the court process to sue a deceased person. To whom will the summons or the process be served? Who will take responsibility or answer to the case? This is in bad taste and it should not be allowed to happen.

From the above I find that this suit is an abuse of court process and is hereby struck out with costs to the defendants. The upshot is that the defendants' application dated 24th August 2017 is hereby allowed.

Dated and delivered on this 14th day of December, 2017

M.A ODENY

JUDGE

Read in open court in the presence of:

Mr. Aseso for the 2nd and 3rd defendant

Mr. Koech – Court Assistant.

Defendant – absent.