



**M'ringera v M'alaine & 6 others (Environment & Land Case
16 of 2020) [2024] KEELC 938 (KLR) (21 February 2024) (Ruling)**

Neutral citation: [2024] KEELC 938 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT & LAND CASE 16 OF 2020
CK NZILI, J
FEBRUARY 21, 2024**

BETWEEN

ZABLON MURUNGI M'RINGERA PLAINTIFF

AND

JUSUF MAITIMA M'ALAINÉ 1ST DEFENDANT

**COUNTY LAND ADJUDICATION AND SETTLEMENT OFFICER MERU
COUNTY 2ND DEFENDANT**

**COUNTY LAND ADJUDICATION AND SETTLEMENT SURVEYOR MERU
COUNTY 3RD DEFENDANT**

LAND REGISTRAR MERU COUNTY 4TH DEFENDANT

**DIRECTOR OF LAND ADJUDICATION AND SETTLEMENT ... 5TH
DEFENDANT**

CHIEF LAND REGISTRAR 6TH DEFENDANT

ATTORNEY GENERAL 7TH DEFENDANT

RULING

1. Before the court is the application dated 17.11.2023, seeking firstly, leave for the applicant, that is, the Hon. Attorney General, to withdraw the memorandum of appearance and defense filed on behalf of the public trustee, the 1st defendant, or in the alternative, the same be struck out. The second prayer is for the stay of proceedings. The third prayer is for the public trustee to be ordered to enter an appearance and file a defense within seven days. The fourth prayer is for the parties to be granted leave to amend their pleadings and comply with Orders 3, 7, and 11 of the *Civil Procedure Rules* within two weeks. The fifth prayer is for setting aside all the proceedings for the suit to start *denovo*.



2. The reasons are contained on the face of the application and a supporting affidavit sworn by Asenath Kaimura on 14.11.2023. Briefly, the deponent says she is a granddaughter to Rebecca Mwanjiru and niece to Maitima Yusuf, therefore, a beneficiary to the deceased's estate. She avers that the court appointed the public trustee to represent the interests of the deceased, but it is the Hon. Attorney General who entered an appearance and filed a defense that does not represent the interest of the estate.
3. Further, the deponent says she has instructed the Public Trustee Meru to defend their interest in the suit. Similarly, the deponent prays that their witness's statements, list of witness documents, and issues attached to the supporting affidavit be deemed to be duly filed. Unfortunately, none are attached to the affidavit filed before the court.
4. The application is opposed through a replying affidavit of Zablon Muriungi M'Ringera sworn on 4.12.2023. It is averred that the application is not merited because there is non-disclosure of material facts; the affidavit is sworn by a person lacking the capacity to swear or defend the suit on behalf of the public trustee who is yet to be replaced, and no consent has been sought from the court to substitute the deceased representative.
5. Further, the respondent states that no consent has been sought from the immediate family members of the deceased to represent their interest; hence, the deponent is a stranger to the public trustee and the estate of the deceased. Additionally, the respondent avers that the public trustee has not sought permission from the court and the Hon. AG to cease acting for the estate of the deceased.
6. The respondent avers the Hon Attorney General has brought a stranger to depose to the issues and that Mr. Kimathi learned state counsel for the Attorney General has been appearing for the public trustee while Miss Mbaikyatta has been appearing for the rest of the defendants; Strangely, they now say they had no instructions from the public trustee. They should, therefore, have down their tools.
7. Further, the respondent avers the allegations of lack of instructions are a creation of the learned counsel to assist a stranger through the back door, having failed officially to replace the deceased since 2021 through Mr. Atheru, advocate then on record for the family. The respondent avers the public trustee was appointed in the probate court on 12.10.2021 after the family had failed to honor the citation proceedings, and therefore, the deponent cannot come at this juncture to say that the public trustee was not the right person to defend the suit.
8. The respondent avers it is on record that after the public trustee came on board, it contacted the beneficiaries for instructions but who failed or refused to volunteer any information for it to comply and cannot, therefore, come to court to denounce it. The respondent avers the defense filed on 13.1.2023 raises triable issues and was followed up with compliance under Order 3 Rule 2 of the *Civil Procedure Rules*.
9. The plaintiff avers that the trial started and the 4th defendant was called to produce documents that were not objected to by the applicants; otherwise, the application is brought to stall, derail, delay, or stop the expeditious disposal of the suit long after the pre-trial conference, discretionary orders were made in favor of the applicants to put their house in order and an extension of an olive branch to the family of the deceased to give evidence for the protection of the deceased estate, which the plaintiff did not object to going by the ruling delivered on 5.10.2022.
10. The plaintiff avers he was expecting the family members to be witnesses for the public trustee but not to denounce the pleadings so far filed on their behalf. The respondent avers he is ailing, elderly, drained and shouldn't wait for strangers to rewind the clock of the suit against him by seeking draconian prayers of striking out pleadings without basis, more so by the public trustee who has filed the defense raising triable issues.



11. This matter started on 23.6.2020 with an interlocutory application. Mr. Atheru, advocate for the 1st defendant, appeared on 10.2.2021 and filed written submissions to the application. Counsel told the court on 21.4.2021 that the 1st defendant passed on on 3.3.2021 and was following up substitution of the deceased defendant. An order was made to substitute on 12.10.2021, but Mr. Atheru told the court he had no instructions to represent the estate or to substitute. The court ordered the plaintiff to take appropriate steps to substitute the deceased 1st defendant.
12. On 16.11.2021, counsel for the plaintiff told the court that citation proceedings had been filed, but the deceased family was unwilling to take up letters of administration. The orders applying to join the public trustee were eventually served upon the 2nd – 7th defendants' counsel, who informed the court that the public trustee was contacting the beneficiaries to comply with Order 11 of the [Civil Procedure Rules](#).
13. Parties were given 30 days to amend their pleadings to include the public trustee as the 1st defendant and comply with Order 11 [Civil Procedure Rules](#). By a ruling dated 5.10.2022 brought by Asenath Kaimuri Nyamu, now the deponent of the instant application, the court held it had no jurisdiction to determine and or appoint who should represent the deceased estate or replace the public trustee, was the 1st defendant. The court directed that the family of the deceased were at liberty to be witnesses for the public trustee. It dismissed the application. It appears the deponent did not follow up with the public trustee to file any witness statements or documents. In the absence of any attendance and or compliance with Order 11 of the [Civil Procedure Rules](#) by the public trustee despite service, a hearing date was fixed for 7.3.2023, when Mr. Mwenda advocate sought an adjournment since the public trustee was reported as indisposed. On 27.7.2023 Mr. Kimathi learned counsel, later on, appeared for the public trustee and proceeded as holding brief for the public trustee.
14. On 31.10.2023 the learned counsel orally applied to amend the defense and file witness statements for the 1st defendant on behalf of the public trustee. Counsel also sought for the case to start denovo and to split the defense by the 1st – 7th defendants for the interest of the 1st defendant's deceased family. Mr. Ochwanda learned counsel for the plaintiff opposed the application. The court, despite opposition by the plaintiff, granted the 1st defendant a chance to apply within 14 days.
15. With this background, it is clear that the deponent had raised similar issues in the earlier application, where the court, in its ruling found it had no powers under the [Law of Succession Act](#) to determine who should represent the estate of the deceased. To date, the deponent has not moved the probate court to replace the public trustee, since the family was now willing to take up the interests of the deceased's estate.
16. On the same reasoning, this court has not been told by way of documentation that the public trustee no longer has instructions to file the defense and or the one filed was without instructions. Further, the 1st defendant has not stated on oath that whoever has been appearing holding briefs for the office of the public trustee had no instructions from the said office to step in for the it. Until the office of the public trustee and whoever has been stepping in for it applies formally to disown, withdraw, and or seek leave to amend the pleadings, I find the 2nd – 7th defendants conflicted to purport to make this application or on behalf of the office of the public trustee, primarily through Asenath Kaimuri Nyamu whose similar application was dismissed by this court on 5.10.2022.
17. The issue of who to represent the estate of the deceased, is beyond the jurisdiction of this court. The deponent was granted a limited grant by the Chief Magistrate Meru dated 23.3.2022. The one dated 6.12.2021 at the High Court Meru was specific to this suit. It appointed the public trustee as opposed to the former. Therefore, it leaves this court with no doubt that the 2nd – 7th defendants and



the deponent cannot possibly speak for and on behalf of the public trustee. Similarly, this court has already held in a previous ruling that until the family lawfully replaces the public trustee, it remains the competent party to these suit or proceedings. The deponent has not obtained any affidavit or authority from that office to speak on its behalf.

18. The 2nd – 7th defendants' counsel on record has no superior right to speak or contradict an office of equal status unless what the said officer of Hon. Attorney General has been doing, as per the court record, was not from the office of the public trustee.
19. The defense filed on behalf of the 1st – 7th defendants was signed by Miss Mbaikyatta Darlive, learned state counsel, on 13.1.2023. She has not sworn an affidavit to disown it, explain why and under whose authority she filed it, and or to seek to amend it to reflect only the interests of the 2nd – 7th defendants. Unfortunately, there has been back and forth in this matter, especially from the defendants trying to use delaying tactics to derail or obstruct the cause of justice.
20. Counsels must facilitate the overriding objective of this court in the expeditious disposal of suits. The 1st – 7th defendants filed a joint list of documents and witness statements. The alleged annexures or witness statements, list of documents, and list of issues, by the deponent have not been attached to the affidavit. The court is unable to decipher the alleged differences between the 1st defendant's draft defense and that of the 2nd – 7th defendants.
21. The court cannot direct the 1st defendant on what to do beyond various orders and directions already issued up to the time the suit was listed for hearing and the plaintiff took to the witness stand.
22. Stay of proceedings, or setting aside of proceedings, must be based on good reasons and on sound legal principles, for it interferes with the right of access to justice and fair hearing as held in *Global Tours & Travels Limited* Nairobi H.C Winding up Cause No. 43 of 2000 and *Kenya Wildlife Service vs James Mutembei* (2019) eKLR.
23. There are no exceptional circumstances for the court to stay this suit. There are no reasonable grounds to set aside the proceedings and start the matter denovo. Court orders and directives have to be obeyed; otherwise, there will be consequences. The court has bent backward on several occasions to accommodate the interests of the deceased estate and the 1st defendant. The family had a law firm representing them. The public trustee is also on record in saying that the family of the deceased became uncooperative even when the court ordered that they comply with Order 11 *Civil Procedure Rules*. Mr. Kimanthy learned counsel is also recorded to have told the court that he had prepared witness statements for the witnesses on behalf of the 1st defendant, which was awaiting signatures by the witnesses. To date, such witnesses' statements have never been filed. The upshot is that I find the application both incompetently filed and lacking merits. The same is dismissed with costs to the plaintiff.

Orders accordingly.

DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT MERU ON THIS 21ST DAY OF FEBRUARY 2024

HON. CK NZILI

JUDGE

In presence of

C.A Kananu

Obwada for the plaintiff

