



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAKURU

ELC NO 155 OF 2013

JOSPAT KIMANI WAMBURA.....1ST PLAINTIFF

ELIZABETH WANJIKU WAMBURA.....2ND PLAINTIFF

FRANCIS KAMAU WAMBURA3RD PLAINTIFF

VERSUS

PAUL MUNG'ARA THUKU & MARY NJOKI THUKU

(Administrators of Estate of Thuku Mung'ara)DEFENDANTS

RULING

(Application to strike out suit as being incompetent; defendants sued as representatives of a deceased person; defendants not representatives of the deceased; suit dismissed).

1. The application before me is that dated 16 July 2012 filed by the defendants. They seek orders that the plaint be struck out. The main ground upon which the application is based is that the defendants are not the administrators of the estate of Thuku Mungara.

2. A brief background will reveal the basis for this application.

3. The suit herein was commenced by way of plaint filed on 15 March 2012. There are three plaintiffs who have described themselves as administrators of the estate of Wilfred Wambura Mateta. The defendants are two, and they are named as Administrators of the estate of one Thuku Mung'ara. The case of the plaintiffs is that the late Wilfred Wambura Mateta (Mateta) co-owned with Thuku Mung'ara (Mung'ara) shares in New Pilion Estate Ltd under a Trust Deed. Mateta died in the year 1986 and it is claimed that after his death, Mung'ara refused to declare the profits of the Trust yet it was a term that they would share the proceeds equally. The plaintiffs contemplated filing suit but Mung'ara died in the year 2010 before they could do so. In the suit, the plaintiffs have asked for an order directing the defendants to declare the profits of the Trust since 1986 and an order of transfer of half the shares of New Pilion Estate Ltd from the name of Thuku Mung'ara to the name of the plaintiffs.

4. The defendants entered appearance and immediately filed a Preliminary Objection that they are not the legal representatives of the estate of Mung'ara. It was their view that the suit is a non-starter. Shortly thereafter, this application to strike out the plaint was filed. The application is brought under Order 2 Rule 15 and Order 31 of the Civil Procedure Rules. It is the view of the applicants that the suit is scandalous,

frivolous and vexatious, and discloses no cause of action against the defendants. The supporting affidavit to the application is sworn by the 1st defendant. He has deposed that neither himself nor the 2nd defendant are administrators of the estate of Mung'ara . It is deposed that after filing of this suit, the plaintiff took out a citation against them. It is their position that the citation does not cure the defects in the suit. They have asked that the plaint be struck out.

5. The plaintiffs did not respond to the application and neither did their counsel, M/s Hari Gakinya & Company Advocates, turn up at the hearing of the application. Mr. Kahiga for the applicants in supporting the application, referred me to seven authorities on this point namely,

1. *Festo Wakhungu Sefana -Vs- Moody Aradi (2015) EKL.R.*
2. *John Karanja Wanjua & 4 Others -Vs- Maina Githaiga & 7 Others (2011) EKL.R.*
3. *Jospeph Kahindi & 313 others – Vs- Mohammedali Sulemanji Essaji (2004) EKL.R.*
4. *Jeremiah Kamau Gitau & 2 Others-Vs- Wandai & 5 others (1989) EKL.R.*
5. *Rodah Mugikuyu Mutunga & 4 others-Vs- Kitole Mutinda & Another (sued as the widows & personal representative of William Mutinda Kaliali & another.*
6. *Omar Makonde Mturi -Vs – Benson Mwadzombo Hanga (2003) EKL.R.*
7. *Godfrey Omondi Otieno – Margaret Achola Lukas & Another (2013 EKL.R.*

6. All the above authorities are unanimous that only a personal representative can be sued on behalf of the estate of a deceased person. In all the above cases, the suits failed where the person sued was not a personal representative of a deceased person. Under Section 3 of the Law of Succession Act, a personal representative means the executor or administrator of a deceased person. In this case, it is not disputed that the defendants are not executors or administrators of the estate of Thuku Mung'ara. Obviously, the description in the plaint, that they are administrators of the estate of Thuku Mung'ara cannot apply, for they are clearly not the personal representatives of the estate of the late Mung'ara. The plaintiffs sued the wrong persons. I really do not see the need of saying more. This suit is a non-starter. It is hereby struck out with costs.

It is so ordered.

Dated, signed and delivered in open Court at Nakuru this 18th day of June 2015.

MUNYAO SILA

JUDGE

ENVIRONMENT AND LAND COURT

AT NAKURU

In presence of: -

N/A for M/s Mirugi Kariuki & Co Advocate for defendant/applicant.

N/A for M/s Hari Gakinya & Co for plaintiffs/ respondents.

MUNYAO SILA

JUDGE

ENVIRONMENT AND LAND COURT

AT NAKURU