



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA**

**ELC CASE NO. 797 OF 2013**

**MARGARET WAMBUCI MBUTU(SUING AS THE REPRESENTATIVE OF THE ESTATE OF  
MIRIARI MBARATWA (DECEASED) .....PLAINTIFF**

**VERSUS**

**MINAXI KIRITKUMAR PATEL.....DEFENDANTS**

**MEHA KIRITKUMAL PATEL.....DEFENDANTS**

**BIMAL KIRITKUMAR PATEL.....DEFENDANTS**

**ALBERT WANJOHI MBUTU..... APPLICANT**

**RULING**

ALBERT WANJOHI MBUTU the applicant herein has moved this Court citing the provisions of **Order 24 Rule 3 of the Civil Procedure Rules** as well as all the other enabling provisions of the law for the following orders:-

1. That this Honourable Court be pleased to substitute the applicant in place of the deceased plaintiff.
2. That costs be in the cause.

The application is based on the grounds set out therein and also supported by the applicant's affidavit.

From both the application and supporting affidavit, it is clear that the applicant wishes to be substituted in place of the deceased plaintiff who died on 18<sup>th</sup> February 2014 and that he has obtained a limited grant of letters of administration for that purpose and intends to proceed with this suit. Both the death certificate of the deceased MARGARET WAMBUCI MBUTU and the limited grant ad litem issued in KERUGOYA HIGH COURT SUCCESSION CAUSE NO. 471 OF 2014 were annexed.

The application is opposed and by his replying affidavit, BIMAH KIRITKUMAR PATEL the 3<sup>rd</sup> defendant/respondent herein has deponed, inter alia, that the applicant does not hold letters of administration in respect of the Estate of the late MARGARET WAMBUCI MBUTU and it is not even clear whether she died on 18<sup>th</sup> February 2014 or 18<sup>th</sup> May 2015 as there is a contradiction in both the death certificate and the supporting affidavit. Further, that the applicant has not elaborated on why he is substituting MIRIARI MBARATWA who died more than 30 years ago. It is also deponed that the applicant obtained letters of administration on 15<sup>th</sup> September 2014 yet his uncle obtained similar letters in February 2012 and those letters have not been revoked. It is also deponed that this application has been filed with in-ordinate delay.

In a further supporting affidavit, the applicant stated that this suit was originally filed by MARGARET WAMBUCI MBUTU as a representative of the Estate of MIRIARI MBARATWA and the said MARGARET WAMBUCI MBUTU died on 5<sup>th</sup> May 2014 and not 18<sup>th</sup> February 2014 which is a topographical error after which he was appointed a representative of the Estate of the late MIRIARI MBARATWA who was his grandfather.

Submissions have been field by counsels for both sides.

I have considered the application, the parties' affidavits and respective annexures as well as the written submissions by counsels.

**Order 24 Rule 3 (1) of the Civil Procedure Rules** provides as follows:-

***“Where one of two or more plaintiffs dies and the cause of action does not survive or continue to the surviving plaintiff or plaintiffs alone, or a sole plaintiff or sole surviving plaintiff dies and the cause of action survives or continues, the Court, on application made in that behalf, shall cause the legal representative of the deceased plaintiff to be made a party and shall proceed with the suit”***

This suit was originally filed by MARGARET WAMBUCI MBUTU (deceased) suing as the representative of the Estate of MIRIARI MBARATWA on 15<sup>th</sup> November 2013. It would appear from the record herein that there were two limited grant of letters of administration issued in respect of the Estate of MIRIARI MBARATWA who died on 7<sup>th</sup> August 1985. One grant was issued to the deceased on 11<sup>th</sup> April 2013 in KERUGOYA HIGH COURT SUCCESSION CAUSE NO. 2 OF 2013 while another was issued to JAMES MBARATWA KIBOCHI in EMBU HIGH COURT SUCCESSION CAUSE NO. 140 OF 2012. It is the submission of Ms Thungu advocate for the defendants that firstly, the grant issued to JAMES MBARATWA KIBOCHI ought to have been revoked before the applicant obtained letters in respect of the same Estate. There is then the grant of letters of administration ad litem issued to the applicant in respect to the Estate of MIRIARI MBARATWA on 18<sup>th</sup> September 2014 in KERUGOYA HIGH COURT SUCCESSION CAUSE NO. 471 OF 2014. Ms Thungu further submits that the applicant is not the legal representative of the Estate of the late MARGARET WAMBUCI MBUTU and so he cannot be substituted in her place.

My view of the matter is that this suit had been filed by MARGARET WAMBUCI MBUTU as a representative of the Estate of the late MIRIARI MBARATWA. The Estate therefore remains that of the late MIRIARI MBARATWA and not that of MARGARET WAMBUCI MBUTU. It was therefore in order for the applicant to obtain a grant of letters of administration in respect to the Estate of the late MIRIARI MBARATWA before filing this application. The applicant did not have to take out letters of administration for the Estate of MARGARET WAMBUCI because this suit is not filed with respect to her Estate. She too had filed this suit not with respect to her own claim but as a representative of the Estate of the late MIRIARI MBARATWA.

It is also argued by the respondents that MIRIARI MBARATWA had not filed any suit against the defendants and therefore no other party can purport to substitute him or take out letters of administration with respect to his Estate. This suit, as I have indicated above, was filed by the late MARGARET WAMBUCI MBUTU on behalf of the Estate of the late MIRIARI MBARATWA. The law allows a suit to be filed by a deceased's legal representative and so it cannot be correct to argue, as the respondents have done, that the said MIRIARI MBARATWA did not institute any suit against the defendants. This suit was instituted on behalf of his Estate by the late MARGARET WAMBUCI MBUTU as is clear from the pleadings herein.

With regard to the confusion as to when exactly MIRIARI MBARATWA died, it is true that in the limited grant ad litem issued on 11<sup>th</sup> April 2013 in HIGH COURT KERUGOYA SUCCESSION CAUSE NO. 2 OF 2013 his date of death is indicated as 17<sup>th</sup> August 1985 while in the previous limited grant ad litem issued in EMBU HIGH COURT SUCCESSION CAUSE NO. 140 OF 2012, the date of death is

indicated as 16<sup>th</sup> July 1983. This Court cannot purport to interrogate those issues. Indeed it has no jurisdiction to do so because that is an issue to be raised in the Courts that issued those grants. This Court is entitled to presume that both grants were properly obtained and are therefore genuine until revoked by the issuing Courts or superior Courts or shown to be fake.

It has also been submitted that this application has been brought with undue delay. MARGARET WAMBUCI MBUTU who was the legal representative of the Estate of MIRIARI MBARATWA died on 5<sup>th</sup> May 2014 and the applicant was then appointed the legal representative of the same Estate on 18<sup>th</sup> September 2014. He then filed this application on 9<sup>th</sup> February 2015 which was within one year from the date of death of MARGARET WAMBUCI MBUTU who had been pursuing the claim on behalf of the Estate of MIRIARI MBARATWA. ***Order 24 Rule 3 (2)*** states that such an application be made within one year of the death of the deceased plaintiff. MIRIARI MBARATWA may have died some thirty (30) years ago but for all intents and purposes, his claim was taken over by MARGARET WAMBUCI MBUTU who now became the plaintiff whom the applicant now wishes to substitute. He is perfectly within his rights to do so having obtained a grant of letters of administration ad litem in respect of the Estate of MIRIARI MBARATWA on whose behalf this suit was filed.

Ultimately therefore, I find that the application dated 4<sup>th</sup> February 2015 and filed herein on 9<sup>th</sup> February 2015 is merited. I allow it.

Costs thereof shall be in the cause.

**B.N. OLAO**

**JUDGE**

**4<sup>TH</sup> DECEMBER, 2015**

COURT: Ruling dated, delivered and signed this 4<sup>th</sup> December, 2015 in open Court.

Mr. Mwangi for Plaintiff/Applicant present

Mr. Miano for Ms Thungu for Defendants present.

**B.N. OLAO**

**JUDGE**

**4<sup>TH</sup> DECEMBER, 2015**