



**Mtutula & another (Suing as Legal Administrators of Jackson Mutula Mutua) v Postal Telecommunications Employees & 3 others (Suing as the Trustees of P & T Housing Co-operative Society Ltd); Mutula & 2 others (Intended Applicant) (Environment & Land Case 47 of 2017) [2024] KEELC 1358 (KLR) (13 March 2024) (Ruling)**

Neutral citation: [2024] KEELC 1358 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS  
ENVIRONMENT & LAND CASE 47 OF 2017**

**A NYUKURI, J  
MARCH 13, 2024**

**BETWEEN**

**BENSON KYALO MTUTULA ..... 1<sup>ST</sup> PLAINTIFF  
MWANGANGI MUTULA ..... 2<sup>ND</sup> PLAINTIFF  
SUIING AS LEGAL ADMINISTRATORS OF JACKSON MUTULA MUTUA**

**AND**

**POSTAL TELECOMMUNICATIONS EMPLOYEES ..... 1<sup>ST</sup> DEFENDANT  
HOUSING CO-OPERATIVE SOCIETY ..... 2<sup>ND</sup> DEFENDANT  
CHARLES MWANGI MUCHIRI ..... 3<sup>RD</sup> DEFENDANT  
ALEX MOSETI ..... 4<sup>TH</sup> DEFENDANT  
SUIING AS THE TRUSTEES OF P & T HOUSING CO-OPERATIVE SOCIETY LTD**

**AND**

**DOROTHY MUENI MUTULA ..... INTENDED APPLICANT  
IRENE NTHENYA NDUVA ..... INTENDED APPLICANT  
JOSEPHINE MWELU MUTUA ..... INTENDED APPLICANT**

**RULING**

1. Before court is a notice of motion application dated 17<sup>th</sup> April 2023 filed by the plaintiff seeking the following orders;



- a. That the applicants be added and/or joined in these proceedings as co-plaintiffs.
  - b. That upon grant of prayer 1 above, the entire suit be struck out with no orders as to costs.
  - c. That costs of this application be in the cause.
2. The application is based on grounds on the face of it and the supporting affidavit sworn on 17<sup>th</sup> April by Irene Nthenya Nduva, the 2<sup>nd</sup> applicant. She deposed that the applicants were the legal administrators of the estate of Jackson Mutula Mutua, having been appointed as such on 7<sup>th</sup> December 2022, after the grant made to the Plaintiffs herein was revoked by a ruling made on 29<sup>th</sup> September 2017. She averred that the 2<sup>nd</sup> Plaintiff was already dead while the 1<sup>st</sup> plaintiff no longer had locus to sustain the suit by virtue of being removed from being the deceased's estate's administrator.
  3. She maintained that the Plaintiffs herein had filed this suit without the consent of the other beneficiaries of the deceased's estate and that they were keen on withdrawing this suit so as to protect the estate from unnecessary litigation and expenses. She stated that the suit property herein being Plot Number Mavoko Town Block 2/170 is already registered in the deceased's name and therefore this suit serves no purpose. She maintained that the application ought to be allowed in the interest of justice. She attached a copy of the grant; ruling dated 29<sup>th</sup> September 2017 and a search certificate for the suit property.
  4. The application was not opposed.

#### **Analysis and determination**

5. I have carefully considered the application together with the affidavit in support thereof and attached evidence. The sole issue that arise for determination are as follows;
  - a. Whether the applicants have met the threshold for joinder to this suit as plaintiffs.
  - b. Whether the prayer for striking out the suit ought to be granted.
6. The law governing joinder of a party to proceedings before court is provided for in Order 1 Rule 10 (2) of the *Civil Procedure Rules* as follows;
 

The court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all questions involved in the suit, be added.
7. Therefore, the court can add a necessary party to proceedings either as plaintiff or defendant or in any other capacity if their presence in the suit is necessary to enable the court completely determine all matters arising in a suit.
8. In the case of *Technomatic Limited T/A Promopack Company v Kenya Wine Agencies Limited & another* [2014] eKLR, the court laid down the principles to be considered in joining a party to a suit to include;
  - a. They must be a necessary party.
  - b. They must be a proper party.



- c. In the case of a defendant there must be a relief flowing from that defendant to the plaintiff.
  - d. The ultimate order or decree cannot be enforced without their presence in the matter.
  - e. Their presence is necessary to enable the Court to effectively and completely to adjudicate upon and settle all questions involved in the suit.
9. In the instant matter, the applicants have demonstrated by the ruling of the Probate court made on 29<sup>th</sup> September 2017 in succession cause No. 162 of 2000, that the grant of letters of administration made to the plaintiffs herein was revoked and title of the suit property reverted to the deceased herein. The applicants also produced a grant issued to them on 7<sup>th</sup> December 2022 in the above suit, thus effectively taking away the capacity of the plaintiffs to sustain this suit as they are no longer the deceased's administrators. Therefore as the plaintiffs herein are no longer administrators of the deceased's estate, they have no capacity to continue with this suit. The people who have capacity to sue or continue with this suit on behalf of the deceased's estate are the applicants herein, since Section 82 of the [Law of Succession Act](#) only allows legal representatives of deceased persons to sue or sustain suits on behalf of a deceased person.
10. Having said that, and considering that the plaintiffs herein are no longer administrators of the estate of the deceased, they have no capacity to sustain this suit and therefore this court on its own motion, proceeds to strike out the names of the plaintiffs from this suit. Since the applicants are now the administrators of the estate of the deceased herein, I am satisfied that the applicants ought to be joined to this suit as plaintiffs, and I hereby join them as such.
11. The applicants who are now plaintiffs state that they do not intend to prosecute this suit as the same has been overtaken due to the fact that the suit property has reverted to the deceased, and there is nothing to pursue. They have asked this court to strike out the suit. A suit belongs to the plaintiff and if they do not intend to prosecute it, then the court will allow their prayer for striking out.
12. The upshot is that I find and hold that the application dated 12<sup>th</sup> April 2023 is merited and the same is allowed in the following terms;
- a. The names of Benson Kyalo Mutula and Mwangangi Mutula, the plaintiffs herein are hereby struck out from this suit.
  - b. Dorothy Mueni Mutula, Irene Nthenya Nduva and Josephine Mwelu Mutua be and are hereby added in these proceedings as plaintiffs.
  - c. This suit be and is hereby struck out.
  - d. There is no order as to costs.
13. It is ordered.

**DATED, SIGNED AND DELIVERED AT MACHAKOS VIRTUALLY THIS 13TH DAY OF MARCH, 2024 THROUGH MICROSOFT TEAMS VIDEO CONFERENCING PLATFORM**

**A. NYUKURI**

**JUDGE**

In the presence of:

Mr. Rombo for 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> defendants

No appearance for plaintiffs



