



Gachoki & 23 others v Njuguna & Others; Gichangi & 2 others (Intended Substitutes) (Civil Appeal (Application) 54 of 2020) [2024] KECA 1379 (KLR) (3 October 2024) (Ruling)

Neutral citation: [2024] KECA 1379 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NYERI
CIVIL APPEAL (APPLICATION) 54 OF 2020**

JW LESSIT, JA

OCTOBER 3, 2024

BETWEEN

JOHN GAKURU GACHOKI & 23 OTHERS & 23 OTHERS & 23 OTHERS & 23 OTHERS APPLICANT

AND

JAMES NDEGE NJUGUNA & OTHERS RESPONDENT

AND

CHARLES MUNENE GICHANGI INTENDED SUBSTITUTE

PETER WACHIRA NJUGUNA INTENDED SUBSTITUTE

JOSEPH MURIITHI MUTHIKE INTENDED SUBSTITUTE

(An appeal against the Ruling and Orders the Environment and Land Court at Nairobi (Cherono, J.) delivered on 28th June, 2024 in E.L.C Cause No. 89 of 2014.)

RULING

1. The application has been under order 52 rule 1 and order 25 rule 3(1) and (2) (sic). It seeks an order that:
 - i. The Honorable Court be pleased to substitute Charles Munene Gichangi for the 7th Appellant Stephen Gichangi Mithamo (deceased), Peter Wachira Njuguna for the 10th Appellant Njuguna Njogu (deceased) and Joseph Muriithi Muthike for the 11th Appellant Julius Muthike Njuguna (deceased).
 - ii. That costs of the application be in the cause.
2. The application is based on grounds on the face of the application and in the supporting affidavits of Charles Munene Gichangi, Peter Wachira Njuguna and Joseph Muriithi Muthike. The grounds were:



- a. That the 1st Intended Substitute has since obtained a Certificate of Confirmation of Grant;
 - b. That the 2nd and 3rd Intended Substitutes herein have since obtained Limited Grants Ad- Litem; and,
 - c. That the Intended Substitutes herein are sons of the deceased persons' well vast with the matters herein.
3. The brief background is contained in the affidavits sworn by each of the intended substitutes filed herein dated 4th June 2024. In summary they depose that: they, Charles Munene Gichangi, Peter Wachira Njuguna and Joseph Muriithi Muthike respectively, are the sons of Stephen Gichangi Mithamo the 7th appellant; Njuguna Njogu the 10th appellant and Julius Muthike Njuguna the 11th appellant herein respectively who are since deceased; that the applicants have obtained Letters of Administration with respect to the Estates of the deceased appellants, and wish to substitute them so as to proceed with the hearing and determination of this appeal.
 4. The 1st applicant/intended substitute deposed that he is one of the co-administrators of the Estate of Stephen Gichangi Mithamo who died on 24th September 1995, and that his estate devolved to his wife Jane Wambui Gichangi who died on 4th April 2008 and the applicant was appointed as one of the Administrators of her Estate upon being granted with the Certificate of Confirmation of Grant on 27th June 2015.
 5. The 2nd applicant/ intended substitute deposed that he is the son of Peter Wachira Njuguna who died on 24th August 2019 and that he has obtained a Limited Grant Ad-Litem which were issued on 1st September 2023 and wishes to substitute his father in this appeal and suit filed herein.
 6. The 3rd applicant/intended substitute is the son of the 11th appellant herein who died on 30th July 2016 where the applicant has obtained a Limited Grant AD-Litem on 29th September 2023 and wishes to substitute his deceased father in this appeal and suit filed herein.
 7. The application is opposed. One of the respondents has sworn an affidavit on his behalf and that of the other respondents dated 13th September 2024. The application is opposed on the grounds that it has been brought inordinately late; secondly, the applicants have not shown that the cause of action has survived the deceased; and thirdly, it is deposed that the suit has abated.
 8. I have considered the application the affidavit in favour of and opposition to the application, together with the submissions by the applicants. This application has been brought under the Civil Procedure Rules. I noted that a similar application was heard before a single Judge of this Court, (Wanjiru Karanja, JA.) That application was brought under Order 52 rule 1 and Order 25 rule 3 (1)(2) (sic). The learned Judge in a ruling dated 7th July 2024 ruled as follows:
 1. The statute on which the application is premised is not indicated, but it is certainly not premised on any law that donates jurisdiction to this Court.
 2. Some of the parties (if not all) who are sought to be substituted died long before the present appeal was filed. It is necessary and important for the Court's jurisdiction to be properly invoked by citing the law that gives the Court the requisite jurisdiction to handle the application before me.
 9. The applicants have invoked the same rules invoked in the earlier application, making the same mistake of failing to disclose the law on which it is premised. They seek to be substituted in place of the same deceased appellants. The same facts noted by the Court, that some of the parties (if not all) who



are sought to be substituted died long before the present appeal was filed, still exist. This Court's jurisdiction has not been invoked.

10. Accordingly, the application is struck out with no order as to costs.

DATED AND DELIVERED AT NYERI THIS 3RD DAY OF OCTOBER, 2024.

J. LESIIT

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JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

