



Ndegwa (Suing as the legal representative of John Degwa (Deceased) v Maranya (Sued as the legal representative of Fredrick M’Maranya - Deceased) (Environment and Land Miscellaneous Application E002 of 2014) [2024] KEELC 1589 (KLR) (13 March 2024) (Ruling)

Neutral citation: [2024] KEELC 1589 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E002 OF 2014
CK NZILI, J
MARCH 13, 2024

BETWEEN

BESSY NKIROTE NDEGWA (SUING AS THE LEGAL REPRESENTATIVE OF JOHN DEGWA (DECEASED)) APPLICANT

AND

STEPHEN KINYUA MARANYA (SUED AS THE LEGAL REPRESENTATIVE OF FREDRICK M’MARANYA - DECEASED) RESPONDENT

RULING

1. The court is asked to order the reconstruction of Meru H.C Civil Case No. 89 of 1988. The reasons are that the suit land related to LR No. Nyaki/Kithoka/666, which was set aside by Meru H.C Succession Case No. 37 of 1991 in a judgment dated 13.5.2019 and affirmed in a ruling dated 4.2.2022, awaiting the disposal of the said suit.
2. It is averred that the applicants are living on the suit land at the exclusion of anyone else in the estate of the late Fredrick Maranya, but are now threatened with eviction. It is averred that the initial file was destroyed under the direction of the court as per a certificate of destruction issued by the Deputy Registrar of this court.
3. The applicant avers there was a need to open a skeleton file to have the matter heard to a conclusion and there will be no prejudice to the respondent if the orders requested are allowed. The applicant has attached copies of a letter of administration for the estate of John Ndegwa, a chief’s letter dated 15.12.1986, defense and counterclaim, a copy of a death certificate for the late Fredrick Maranya, a land sale agreement dated 18.2.1991, title deed dated 6.5.1991, petition and judgment in the probate cause and ruling dated 4.2.2022, clarifying LR No. Nyaki/Kithoka/666 was not part of the estate of the deceased grandfather, post-judgment application in the probate cause, letter dated 24.11.2022 seeking



confirmation of the destruction gazette notice dated 1.2.2019 and a certificate of destruction, dated 21.8.2019 all marked B.N. 1 – 10 and B.N. 13 (a) & (b) respectively.

4. The application is opposed by a replying affidavit sworn on 13.2.2024 by Stephen Kinyua. It is averred that the application is brought late with no reason for the inordinate delay. That indolence shows that the applicant does not deserve the orders sought. Further, it is averred that the application was not tenable since a lot has happened, changing the material facts, which cannot be cured by amendments as per the attached copy of the green card. That the late John Ndegwa was not a son of the late Fredrick Maranya; he was not a beneficiary of the estate; it was irregular for the clan to allocate him the land; the applicant and his late father were trespassers to the land; he misled the probate court, and that the suit abated after his father passed on. The respondent attached copies of the green card and judgment as annexures SK "1" & "2" respectively.
5. The guidelines for the reconstruction of a skeleton file are set out on pages 33-34 of the 2nd edition of the High Court of Kenya Registry Operations Manual. In this application, it is averred and demonstrated that the file was destroyed in February 2019, following a gazette on 1.2.2019. The applicant has not denied that the suit had abated following the death of the initial plaintiff. The defendant also passed on on 26.6.2014.
6. Order 24 of the Civil Procedure Rules governs the abatement of a suit. If the suit abated following the demise of both parties and there is no evidence of an application to substitute enlarge time or revive the suit it means that by the time the file was destroyed on 21.8.2019 and gazetted, the suit had abated.
7. The applicant has not explained the inordinate delay in seeking to revive the suit or substitute the deceased from 2019, to the filing of this application. The delay has not been explained at all. The applicant cannot go around Order 24 of the Civil Procedure Rules through an application for reconstruction of the file. The court cannot revive an already abated suit. It would be an act in futility.
8. The application is, therefore, dismissed with costs.

DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT MERU

ON THIS 13th DAY OF MARCH, 2024

In presence of

C.A Kananu

Miss Kerubo for Ngunjiri for applicant

HON. C K NZILI

JUDGE

