



**Arodi & another (Suing Through their Attorney Nicodemus Atito Arodi) v Midiwo;
Housing Finance Company – Kenya & another (Third party) (Environment &
Land Case E022 of 2023) [2024] KEELC 4658 (KLR) (6 June 2024) (Ruling)**

Neutral citation: [2024] KEELC 4658 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISUMU
ENVIRONMENT & LAND CASE E022 OF 2023
E ASATI, J
JUNE 6, 2024
(FORMERLY KISUMU ELC NO. 1 OF 2019)
(FORMERLY BUSIA ELC NO. 43 OF 2020)**

BETWEEN

**JEREMIAH ARNOLD OPANDE ARODI 1ST PLAINTIFF
IDA NEREAH ADHIAMBO ARODI 2ND PLAINTIFF
SUING THROUGH THEIR ATTORNEY NICODEMUS ATITO ARODI**

AND

WASHINGTON JAKOYO MIDIWO DEFENDANT

AND

**HOUSING FINANCE COMPANY – KENYA THIRD PARTY
LEGEND VALUERS LIMITED THIRD PARTY**

RULING

1. This ruling is in respect of the application dated 1st March, 2024 brought on behalf of the Defendant pursuant to the provisions of Section 1A, 1B and 3A of the [Civil Procedure Act](#) and order 24 rule 3 [Civil Procedure Rules](#) 2010. The application seeks for orders: -
 - a. That this Honourable Court be pleased to order the revival and reinstatement of the abated suit filed by the late Washington Jakoyo Midiwo, the Defendant herein who passed on during the pendency of the instant suit and the same has abated.
 - b. That this Honourable court be pleased to extend the time within which to substitute the Plaintiff herein one Washington Jakoyo Midiwo (Deceased) with Beatrice A. Mugandathe



personal representative/Administrator to the estate to enable her to prosecute the suit instant suit.

- c. That on granting prayer No. (b) above, the Honourable court do order that the Defendant herein one Washington Jakoyo Midiwo(deceased) be substituted with Beatrice A. Muganda the Administrator to his estate.
 - d. That the costs of this application be in the cause.
2. The grounds upon which the application was brought are that the Defendant passed away on 14th June, 2021 intestate during the pendency of this suit. That Beatrice A. Muganda being the legal representative of the estate of the Defendant through the Grant of Letters of Administration Intestate issued on 24th May, 2022 is desirous of pursuing the instant matter on behalf of the Defendant. That the Plaintiff and 1st and 2nd Third Parties will not be prejudiced if the orders sought are granted. That it is in the interest of justice and fairness that the suit be reinstated.
 3. The application was supported by the averments in the Supporting Affidavit sworn on 1st March, 2024 by Beatrice A. Muganda.
 4. The application was opposed vide the ground of opposition dated 27th March, 2024.
 5. The application was argued orally on 29th April, 2024. It was submitted on behalf of the Applicant that as soon as the personal representative got wind of the matter, she moved the court through the application. That there is no prejudice that the other parties will suffer if the suit is reinstated. Counsel relied on ELC Siaya Case No.36 of 2021 and Nakuru ELC NO.61 of 2017 and Order 31 Rule (1) and (2).
 6. It was submitted on behalf of the Plaintiff that the application was defective. That the Grant of Letters of Administration was made jointly to Beatrice A. Muganda and Samson Midiwo.
That the authority of Samson has not been sought. That Beatrice A. Muganda cannot act alone. Counsel relied on the provisions of Section 45(1) Law of Succession Act and Order 10 Rule 10(3) and Rule 13(1) of Order 1 Civil Procedure Rules and Section 41(1), 80(2) and 81 of the Law of Succession Act.
That these are new parties who want to be joined in the suit. That the application cannot be allowed if Samson Midiwo has not been joined.
 7. I have considered the application and the grounds of opposition thereof. Order 24 pursuant to which the application is brought makes provision for the procedure in case of death or bankruptcy of parties which includes abatement and revival of abated suits. The substantive ground advanced in opposition to the application is that the Grant of Letters of Administration in respect of the estate of deceased has two administrators yet only one of them has applied to be joined in suit to replace the deceased defendant and that this is not allowed by law.
 8. I have read the Grant of Letters of Administration annexed to the application as BAM-2. It was issued on 28th May 2022 and it is in respect of the estate of Washington Jakoyo Midiwo. The Grant is made to two people namely; Beatrice A. Muganda and Samson O. Midiwo both of P.O Box [particulars withheld] Nairobi. Only Beatrice A. Muganda seeks to be substituted in place of the Defendant. There is no consent or authority signed by Samson O. Midiwo allowing Beatrice A. Muganda to proceed alone.
 9. Order 1 rule 13 Civil Procedure Rules relied on by the Respondent requires that where one party has to appear, act or plead for another or others that other or others shall give consent in writing. Section 82



of the Law of Succession Act envisages a situation where the administrators as appointed in the Grant of Letters of Administration act as one or as unit on behalf of the estate. In the case of Re estate of Makoha Idris (2019) eKLR the Court held that

“It must be stated that even though there are four administrators in places, in law there is only one administration or representation to the estate of the deceased. The four administrators hold one grant.....The powers conferred on the administrators by section 82 of the Law of Succession Act are exercisable by all of the administrators named in the grant and all the duties imposed on administrators by section 83 of the act fall on all four Administrators.”

10. In the present case the view of Samson O. Midiwo, the applicant’s co-administrator regarding the application is unknown. There is no evidence that he gave authority or at least that he supports the filing of the application. For lack of participation of the co-administrator in the application, I find that the application is defective and hereby strike it out. No order as to costs.

RULING DATED AND SIGNED AT KISUMU AND READ THIS 6TH DAY OF JUNE, 2024 VIRTUALLY THROUGH MICROSOFT TEAMS ONLINE APPLICATION.

E. ASATI,

JUDGE.

In the presence of:-

Maureen: Court Assistant.

Guserwa for the Applicant.

Ragot for the 1st Interested Party.

