



Ngaari v Chebii & another; Chebii (Being the Legal Administrator of the Estate of the Late Martha Kabon Chebii - Deceased) (Proposed Defendant) (Environment & Land Case 169 of 2017) [2024] KEELC 5394 (KLR) (24 July 2024) (Ruling)

Neutral citation: [2024] KEELC 5394 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT & LAND CASE 169 OF 2017**

**MAO ODENY, J
JULY 24, 2024**

BETWEEN

JAMLICK MURIUKI NGAARI PLAINTIFF

AND

MARTHA KABON CHEBII 1ST DEFENDANT

LAND REGISTRAR NAKURU 2ND DEFENDANT

AND

HENRY K CHEBII (BEING THE LEGAL ADMINISTRATOR OF THE ESTATE OF THE LATE MARTHA KABON CHEBII - DECEASED) PROPOSED DEFENDANT

RULING

1. This ruling is in respect of a Notice of Motion dated 29th June, 2023 by the proposed 1st Defendant / Applicant seeking the following orders:
 - a. Spent.
 - b. That the Honourable Court be pleased to allow the proposed 1st Defendant/Applicant substitute the deceased 1st Defendant in line with the limited Grant ad litem dated 21st June, 2023 in the matter serialized as Nakuru H.c Succession Cause No. E096 of 2023.
 - c. That the Honourable court be pleased to set aside and review its orders issued on 8th June, 2023 that the 1st Defendant's case be deemed as closed and set down a date for the hearing of the 1st Defendant's case.



- d. That upon issuance of order 2 and 3 above, the Honourable court herein be pleased to issue its leave to the parties herein to amend their pleadings accordingly.
 - e. The costs of this application be provided for.
2. The application is based on the annexed supporting affidavit of Henry K. Chebii the proposed 1st defendant/applicant who deponed that he is the son to the 1st Defendant (deceased) and has gotten a limited grant ad litem, which gives him authority to represent the deceased's estate. He further stated that the deceased was the legal and registered owner of the suit land Nakuru Municipality Block 23/304 having been transmitted to her from her late husband Charles Chebii who died in 2008.
 3. The Applicant stated that on 25th January, 2023, counsel for the 1st defendant had informed the court that the 1st defendant was deceased and that the family had applied for a grant of letters of administration which they were yet to secure.
 4. That on 8th June, 2023 counsel for the respondent urged the court to close the case, that the applicant was present in court but his counsel was not present. That this necessitated the appointment of a different counsel to obtain the said grant and represent them in the matter.
 5. It was the Applicant's case that he has now obtained the requisite grant and therefore should be allowed to be substituted and the case reopened for full hearing on merit.

1st Respondent's Case

6. The 1st Respondent filed his replying affidavit sworn on 11th June, 2024 where he denied that the late Martha Kabon Chebii was the legal and registered owner of the suit property.
7. He averred that the hearing notice dated 30th March, 2023 was served upon the 1st defendant's advocate who acknowledged receipt and filed a return of service dated 11th April, 2023. Further that the 1st defendant was bound by the actions of her advocate as he was properly on record and that she never tendered sufficient evidence to warrant this court to reopen the case.

1st Respondent's Submissions

8. Counsel identified two issues for determination, first, whether the Honourable court should allow substitution of the 1st defendant (deceased) with the proposed 1st defendant/applicant.
9. Counsel relied on the case of *Dilpack Kenya Limited v William Muthama Kitonyi* [2018] eKLR and submitted that the substitution would delay the finalization of the case and would be a waste of court's time.
10. The second issue for determination is whether the Honourable court should set aside and review its orders issued on 8th June, 2023 which marked the 1st defendant's case closed. Counsel submitted that the 1st defendant had been accorded a fair chance for hearing but they failed to attend court hence the order should not be set aside.

Analysis And Determination

11. The issues for determination are as to whether the proposed 1st defendant/applicant should be joined as the legal representative of the estate of the deceased 1st defendant and whether the order marking the defence as closed dated 8th June 2023 should be reviewed varied or set aside.



12. Order 24 rule 4 of the Civil Procedure Rules provides as follows:

“(1) Where one of two or more Defendants dies and the cause of action does not survive or continue against the surviving Defendant or Defendants alone, or a sole Defendant or sole surviving Defendant dies and the cause of action survives or continues, the Court, on an application made in that behalf, shall cause the legal representative of the deceased Defendant to be made a party and shall proceed with the suit.”

13. On the first issue, it is trite law that one can only represent the estate of a deceased person when a grant of representation has been made in respect of the estate of such deceased person under the Law of Succession Act.

14. It is on record that the applicant was issued with a Grant of Letters of Administration *Ad Litem* on 21st June, 2023 which gives him the requisite capacity to step in the shoes of the deceased as a legal representative to continue with this case. It is further on record that counsel for the 1st defendant had informed the court that she was deceased and that the family was in the process of seeking for grant of representation.

15. When the matter came up for hearing on 8th June 2023, counsel for the Plaintiff urged the court to close the defence case as the defendant had been given time to substitute but they had not done so. The same was marked as closed as the 1st defendant’s counsel was not present.

16. This matter was transmitted to Justice Njoroge who is on transfer to Malindi to write a judgment but returned it *vide* directions dated 23rd April 2024 to enable this court hear and determine this application. Justice Njoroge stated that the current application for joinder of the Applicant and setting aside the order marking the defence as closed cannot be wished away.

17. It would be in the interest of justice to allow the application for joinder as the matter had not abated by the time the order was made to close the case. The court had been made aware that the 1st defendant was deceased and had granted time for regularizing for substitution with a legal representative of the estate of the deceased.

18. The upshot is that the application dated 29th June 2023 is hereby allowed as follows:

- a. The deceased 1st defendant is hereby substituted with the applicant Henry Kibet Chebii.
- b. The orders of this court dated 8th June, 2023 are hereby reviewed and substituted with an order that the defence case be reopened for hearing and determination.
- a. Both Parties to file and serve amended pleadings within 14 days of this ruling.
- b. Costs of this application shall be in the cause.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 24TH DAY OF JULY 2024.

M. A. ODENY

JUDGE

