



Ngari & another v Land Registrar, Laikipia & another (Environment & Land Case 1 of 2023) [2024] KEELC 5868 (KLR) (20 August 2024) (Ruling)

Neutral citation: [2024] KEELC 5868 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NANYUKI
ENVIRONMENT & LAND CASE 1 OF 2023
AK BOR, J
AUGUST 20, 2024
(FORMERLY NYERI ELC NO. 219 OF 2013)**

BETWEEN

CHARLES GICHUHI NGARI 1ST PLAINTIFF

MARY WANJIKU NDUNGU 2ND PLAINTIFF

AND

THE LAND REGISTRAR, LAIKIPIA 1ST DEFENDANT

RICHARD NGUNJU KIHORA 2ND DEFENDANT

RULING

1. Elizabeth Muthoni Ngari (the Applicant) brought the application dated 11/12/2023 in her capacity as the legal representative of the 2nd Defendant, seeking to be substituted in his place and stay of execution of the decree issued by this court on 13/7/2023 pending hearing and determination of the application. Further, she seeks review or the setting aside of this court's judgment on the basis that the case was concluded two years after the 2nd Defendant had died without any substitution having been made. She sought to file her submissions in the suit after the substitution.
2. The main ground on which the application is made is that Richard Ngunju Kihora, the 2nd Defendant, and the registered proprietor of the land known as Laikipia/Nanyuki West Timau Block 2 (Matanya/Marura/71) died on 16/6/2020 without filing his submissions making the judgment that this court delivered on 13/7/2023 prejudicial and adverse to his family. The other ground is that the cause of action survived the 2nd Defendant and the Applicant is desirous of pursuing the claim on behalf of her deceased husband for the benefit of his estate. She was granted letters of administration ad litem on 15/8/2023 to enable her pursue the matter.



3. The Applicant swore the affidavit in support of the application and annexed the death certificate showing that the 2nd Defendant died on 16/6/2020. She averred that the Plaintiff did not seek substitution and the matter proceeded to conclusion yet the court should have ordered the substitution of the 2nd Defendant. She relied on the mention notices dated 3/8/2022 and 15/2/2023 as well as the hearing notice dated 7/7/2023 in support of her averment that the matter proceeded for trial after her husband had died on 16/6/2020.
4. The Plaintiff, Charles Gichuhi Ngari swore the affidavit opposing the application on 20/5/2024. He averred that he was in the process of executing the decree which the court issued on 4/8/2023 with a view to effecting a transfer of the suit land to his name. He added that this court's judgment was issued following due process after the Applicant, Elizabeth Muthoni Ngari failed to respond to summons served upon her or to notify the court that her husband had died. He argued that it was too late and an afterthought for the Applicant to seek substitution after the matter had been concluded. In his view, the Applicant feared being evicted from his land and paying him the costs awarded by the court after she had enjoyed proceeds from his land for more than five years. He maintained that he proved his case to the required standard.
5. The issue for determination is whether the court should grant the orders sought in the application dated 11/12/2023 by substituting the Applicant as the 2nd Defendant and in his place and setting aside the decree issued by this court and the judgment delivered on 13/7/2023.
6. According to the death certificate exhibited by the Applicant, the Defendant died on 16/6/2020. This suit was heard on 10/2/2014 and on 19/02/2015 at the Nyeri ELC before the case was transferred to the Nanyuki ELC on 16/1/2023 for finalization. According to the typed proceedings, the 2nd Defendant gave evidence on 10/2/2014. By the time this court heard the evidence of the Land Registrar on 24/4/2023, the 2nd Defendant had already died and ought to have been substituted which was not done. The affidavits of service sworn on 12/9/2022, 12/12/2022 and the mention notice dated 3/8/2022 show that the Applicant was served but it was not until 18/8/2023 that she obtained Grant of Letters of Administration Ad Litem for purposes of representing the 2nd Defendant's interest in this suit.
7. The court is inclined to allow prayers 2, 5 and 6 of the application dated 11/12/2023 on condition that the Applicant pays throw away costs of KShs. 50,000/= to the 1st Plaintiff within 60 days of the date of this ruling. The Applicant will continue with the suit from the point the proceedings had reached when the 2nd Defendant died.

DELIVERED VIRTUALLY AT NAIROBI THIS 20TH DAY OF AUGUST 2024.

K. BOR

JUDGE

In the presence of:-

Mr. Charles Ngari- the 1st Plaintiff

Mr. Kariuki Mwangi for the 2nd Defendant

Ms. Wanjiru Karanja for the 1st Defendant

Court Assistant: Diana Kemboi

