



**Njenga v Republic & 3 others (Petition (Application)
10 of 2018) [2019] KESC 76 (KLR) (29 April 2019) (Ruling)**

Leah Waithira Njenga v Republic & 3 others [2019] eKLR

Neutral citation: [2019] KESC 76 (KLR)

**REPUBLIC OF KENYA
IN THE SUPREME COURT OF KENYA
PETITION (APPLICATION) 10 OF 2018
DK MARAGA, CJ & P, PM MWILU, DCJ & VP,
MK IBRAHIM, SC WANJALA & I LENAOLA, SCJJ
APRIL 29, 2019**

BETWEEN

LEAH WAITHIRA NJENGA PETITIONER

AND

**REPUBLIC 1ST RESPONDENT
MINISTER FOR LAND & SETTLEMENT 2ND RESPONDENT
COMMISSIONER OF LANDS 3RD RESPONDENT
AS WAWERU 4TH RESPONDENT**

*(Being an appeal arising from the Judgment of the Court of Appeal
given at Nairobi on 4th May 2018 in Civil Appeal No. 269 of 2013)*

Supreme Court allows parties to be enjoined to a suit in place of a deceased person.

Reported by Beryl A Ikamari

Civil Practice and Procedure - joinder of parties - application to be enjoined to a suit in place of a deceased person - where letters of administration ad litem for purposes of the joinder had been granted and the application was unopposed - circumstances under which such an application would be allowed.

Brief facts

The deceased died on August 3, 2018 after instituting a Supreme Court appeal on June 18, 2018. The widower and son of the deceased applied to be enjoined in the appeal as the 1st and 2nd petitioners in place of the deceased.

Issues

When would the Supreme Court allow an application for intended petitioners to be enjoined to a suit in place of a deceased person?



Held

1. The High Court at Nyahururu granted the applicants letters of administration *ad litem* for the purposes of their joinder in the appeal in place of the deceased.
2. The application was unopposed despite service upon the 1st to 3rd respondents. The 4th respondent did not file a response but attended a mention of the matter before the Deputy Registrar and stated that he had no objection to the application.

Application allowed.

Orders

- i. *Application allowed.*
- ii. *No order as to costs.*

Citations

Statutes

None referred to

Advocates

None mentioned

RULING

1. We have an application dated December 6, 2018 and filed in Court on 10th December 2018 for orders that Jacob Njenga Muiruri and Mark Kamau Njenga, the widower and son of Leah Waithira Njenga (the deceased), respectively, and the legal representative of the deceased's estate be enjoined in this matter as the 1st and 2nd Petitioners in place of the deceased together with the costs of the application.
2. The facts of this case are that the deceased instituted an appeal before this Court on 18th June, 2018. Unfortunately, she passed away on the 3rd of August 2018. Jacob Njenga Muiruri and Mark Kamau Njenga (the applicants/intended petitioners) have applied to be enjoined in this appeal in place of the deceased. Upon their application, on 7th November 2018, the High Court at Nyahururu granted them letters of administration *ad litem* for the purposes of their joinder in this appeal in place of the deceased.
3. Despite service, the 1st to 3rd Respondents have not responded to this application. Though he has also not put in any written response, when the matter came up for mention on 10th January 2019 before the Deputy Registrar, the 4th Respondent attended and stated that he has no objection to this application.
4. In the circumstances, and there being no objection to the application, the same is hereby allowed with no order as to costs.

It is so ordered.

DATED AND DELIVERED AT NAIROBI THIS 29TH DAY OF APRIL, 2019.

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D.K. MARAGA

CHIEF JUSTICE & PRESIDENT SUPREME COURT OF KENYA

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P.M. MWILU

DEPUTY CHIEF JUSTICE & DEPUTY PRESIDENT OF SUPREME COURT



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M. IBRAHIM

JUSTICE OF THE SUPREME COURT

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S. WANJALA

JUSTICE OF THE SUPREME COURT

.....

I. LENAOLA

JUSTICE OF THE SUPREME COURT

I certify that this is a true copy of the original

REGISTRAR

SUPREME COURT OF KENYA

