



Indakwa & another v Koech (Suing as the Legal Representative of the Estate of Sonoiya Arap Kositany – Deceased) (Environment & Land Case 122 of 2013) [2023] KEELC 766 (KLR) (15 February 2023) (Ruling)

Neutral citation: [2023] KEELC 766 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT & LAND CASE 122 OF 2013
FM NJOROGE, J
FEBRUARY 15, 2023**

BETWEEN

NANCY WACHEKE INDAKWA 1ST PLAINTIFF

SIMON MBOTE KARIUKI 2ND PLAINTIFF

AND

JOSEPH KIPRONOH KOECH (SUING AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF SONOIYA ARAP KOSITANY – DECEASED) DEFENDANT

RULING

1. The letter dated 12/9/2000 was addressed to Sonoiya Ole Kositany the deceased, original defendant in this matter and the witness DW1, the administrator to the deceased's Estate desires to produce the same as evidence in this case. Ms Njoroge for the plaintiff has pointed out that the witness does not know how to read and indeed the letter has been read out to him and translated into Swahili by the Court Assistant present. Ms Njoroge also avers that there are questions regarding the letter which she as the plaintiff's counsel desires to ask of Mr Machage in regard to the said document.
2. It is the position held by Mr Waiganjo that the witness being an administrator to the Estate of the deceased can produce the letter in question as he is in the same position as the deceased could have been.
3. It is the correct position that an administrator replaces and substitutes a deceased litigant in all aspects regarding the conduct of a case and inherits all rights that would accrue to the deceased litigant in that suit and the liabilities too as the case may be.
4. However, this court must take caution when it comes to the production of evidence by an administrator as he may be a person who may not know much of what transpired between the deceased and the persons he interacted with in his lifetime. Consequently, though some documentary evidence may be admitted as a matter of course on the basis that the witness is a representative of the deceased's

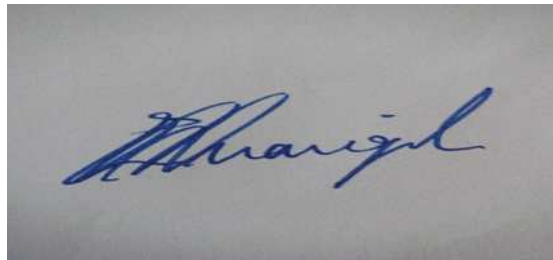


estate, for example, documents of title or other documents evincing rights granted to a deceased in his lifetime, it is my opinion that the fact that a letter was addressed to the deceased per se does not make it capable of production by the administrator. In this case, the subject letter was addressed to the deceased and I think very little background has been given by DW1 to show that he was aware of the goings on at the time of the writing of that letter.

5. Besides, the letter is for most part informative to the deceased and it is quite doubtful that the witness DW1 can testify with any personal knowledge of the issues arising from the contents of that letter, eg the difficulties alleged to be experienced by the Advocate in releasing the title, the contents of the Register and the manner in which it conflicted with the particulars on the title and why, etc. These are matters solely within the knowledge of the writer of that letter and I do not think it would be of any aid to the court if the present witness was allowed to produce the letter dated 12/9/2000.
6. The upshot of the foregoing is that the objection by Ms Njoroge for the plaintiff is upheld. The original of the letter dated 12/9/2000 shall be marked for identification as “DMFI-3”.

Hearing to proceed.

DATED, SIGNED AND DELIVERED AT NAKURU IN OPEN COURT ON THIS 15TH DAY OF FEBRUARY, 2023.



MWANGI NJOROGE
JUDGE, ELC, NAKURU

