



REPUBLIC OF KENYA



**KENYA LAW**  
THE NATIONAL COUNCIL FOR LAW REPORTING  
Where Legal Information is Public Knowledge

**Muburi v First Credit Exchange Development Limited (Environment & Land  
Case 61 of 2017) [2023] KEELC 16642 (KLR) (28 March 2023) (Ruling)**

Neutral citation: [2023] KEELC 16642 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAKURU  
ENVIRONMENT & LAND CASE 61 OF 2017  
LA OMOLLO, J  
MARCH 28, 2023**

**BETWEEN**

**TERESA KIRANGARI MUBURI ..... PLAINTIFF**

**AND**

**FIRST CREDIT EXCHANGE DEVELOPMENT LIMITED ..... DEFENDANT**

**RULING**

**Introduction**

1. This is a ruling in respect of a Notice of Motion application dated February 17, 2023. The said application is expressed to be brought under Order 24 Rule 1, 3(2), 7(2) of the [Civil Procedure Rules, 2010](#) and Section 1A, 1B and 3A of the [Civil Procedure Act](#).
2. The application seeks the following orders:
  - a. spent
  - b. That this Honourable Court be pleased to extend the time to apply for the joinder of the legal representatives of the deceased Plaintiff herein as Plaintiffs in her place.
  - c. That Mathew Johnston Muburi, Josephine Joan Wathi Muburi and Evelyn Njoki Muburi the administrators of the estate of the Plaintiff herein Teresa Kirangari- Muburi (deceased) be joined into this suit as joint Plaintiffs in substitution for the deceased Plaintiff.
  - d. That the suit herein be revived for hearing and determination on merits.
  - e. That the costs of this application be in the course.
3. The application is based on the grounds on its face and the supporting affidavit sworn by Mathew Johnston Muburi.



## **Factual Background.**

4. This suit was commenced by way of Originating Summons dated October 2, 2015 and sought the following orders:
  - a. That the Applicant Teresa Kirangari Muburi of PO Box 28483-00200 Nairobi be declared by this Honorable Court as the legal and lawful owner of the property known as IR Number 37496/1.
  - b. That the charge dated August 15, 1990 registered against the property known as LR No 1144/846 as defined in the grant registered as IR Number 37496/1 in favour of First Credit Exchange Development Limited be discharged.
  - c. That the Deputy Registrar of this Honorable Court do sign all documents necessary to discharge the said charge and to affect the court order.
  - d. That costs of this summons be provided.
5. The court record does not contain a written statement of defence filed by the Defendant. However, the court record has an application dated October 25, 2018 which application was for orders to effect service upon the Defendant by way of substituted service. The said application was not determined.
6. Prior to the filing of the instant application, the Applicant filed an application dated September 12, 2022. The said application sought orders for revival of this suit and substitution of the Plaintiff with Administrators of her Estate but did not seek leave for extension of time to apply to be joined. The said application was struck out.
7. The application under consideration first came up in court on March 1, 2023 where the court directed that the application be heard on March 8, 2023.
8. On March 8, 2023 directions were taken that the application would be heard by way of written submissions. On March 15, 2023, the Applicant having filed submissions, the court reserved the matter for ruling.

## **The Applicant's Contention.**

9. The Applicant contends that he is the intended 1<sup>st</sup> plaintiff, herein having passed on July 2, 2019.
10. The Applicant further contends that the Plaintiff's estate did not obtain a grant of letters of administration until September 7, 2021 when the intended Plaintiffs/Applicants were appointed as legal representatives of the Estate of the deceased Plaintiff vide Nairobi High Court Succession Cause No E1153 of 2021.
11. It is the applicant's contention that the subject matter of the suit is land parcel known as LR Number 37496/1 and that the cause of action survived the deceased.
12. He further contends that the deceased Plaintiff was always ready and willing to prosecute her suit and regularly attend court but died before she could have the suit prosecuted.
13. He also contends that they instructed advocates to file for a grant of administration soon after the deceased's demise and the delay was beyond their control which their then advocates on record attributed to the unprecedented disruptions caused by the covid-19 pandemic.



14. He further contends that they have since changed advocates in order to have the suit prosecuted efficiently adding that they filed an application for revival of suit and substitution of the deceased Plaintiff but the same was struck out and the Applicants granted the liberty to file a compliant application.
15. It is his further contention that the Defendant cannot be traced for service and it is no longer operational and there exists no details at the Registrar of companies concerning the Defendant/ Respondent and that despite numerous attempts it has become difficult trying to gather any information about it.
16. He contends that the Applicants undertake to diligently prosecute the suit should the court grant their pleas to revive the suit.
17. He ends his deposition by stating that it is in the interest of substantive justice and fairness that the intended Plaintiffs/Applicants be joined in the suit to enable them proceed with the case on behalf of the Plaintiff and the matter to be heard and determined on merits.

### **Issues For Determination.**

18. The Applicant filed his submissions on March 9, 2023 and identifies the following issues for determination:
  - i. Whether this Honourable court should extend time within which to apply for the joinder of the legal representatives of the deceased Plaintiff as Plaintiffs in her place.
  - ii. Whether Mathew Johnston Muburi, Josephine Joan Wathi Muburi and Evelyn Njoki Muburi the administrators of the Plaintiff herein Teresa Kirangari Muburi (deceased) should be joined into this suit as joint Plaintiffs in substitution of the deceased Plaintiff.
  - iii. Whether the suit should be revived for hearing and determination on merits.
19. On the first issue the Applicant relies on the provisions of Order 24 Rule 3 (2) which provides that the court may for good reason extend the time for the legal representatives of the deceased to apply for joinder to be made party in the proceedings and thereby apply for the revival of an abated suit.
20. In support of this question, they rely on the decision in [\*Rebecca Mijide Mingole & Another Vs Kenya power and Lighting Company Limited & 2 others 2017 eKLR\*](#) and state that they have shown sufficient cause why the court should extend time to apply for joinder. i.e. delay in obtaining letters of administration due to the covid-19 pandemic
21. On the second issue for determination, the Applicants submit that they have obtained letters of administration to legally transact in the state of the deceased and that upon extension of time they will be entitled to substitution to enable them prosecute the suit to conclusion.
22. On the third issue, the applicant relies on Order 24 Rule 7 of the Civil Procedure Rules and the case of [\*Timothy Limo & 2 Others Vs Joel Kinyanjui Muchiri \(Suing as the legal representative of the late Jacob Muchiri Kinyanjui\) \[2020\] eKLR\*](#) and submits that he has demonstrated that it was beyond his control that he was not able to revive the suit on time.
23. The Applicant also submits that he has shown sufficient cause to warrant the revival of this suit and relies on the cases of [\*Rukwaro Waweru Vs Kinyutho Ritbo & another \[2015\] eKLR\*](#) in support of his



arguments that the court has discretion to extend time and also the decision in *Said Sweilem Gbeithan Saannum Vs Commissioner of Lands & 5 Others [2015] eKLR* in which it was held that the legal representatives of the deceased Plaintiff may apply for the abated suit to be revived after satisfying the court he was prevented by sufficient cause from continuing with the suit.

24. He concludes his submissions by praying that the application be allowed as prayed.

### **Analysis And Determination**

25. After considering the application and the submissions, the issues that arise for determination are

- a. Whether time to apply for joinder of the legal representatives of the deceased Plaintiff should be extended.
- b. Whether the suit should be revived.
- c. Whether the Plaintiff should be substituted with the administrators of her estate.

#### **A. Whether time to apply for joinder of the legal representatives of the deceased Plaintiff should be extended.**

26. Order 24 Rule 3 provides as follows:

1. Where one of two or more Plaintiffs dies and the cause of action does not survive or continue to the surviving Plaintiff or Plaintiffs alone, or a sole Plaintiff or sole surviving Plaintiff 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 Plaintiff to be made a party and shall proceed with the suit.
- (2) Where within one year no application is made under sub rule (1), the suit shall abate so far as the deceased Plaintiff is concerned, and, on the application of the Defendant, the court may award to him the costs which he may have incurred in defending the suit to be recovered from the estate of the deceased Plaintiff:

Provided the court may, for good reason on application, extend the time.

27. The Court of Appeal in the case of *Rebecca Mijide Mungole & another Vs Kenya Power & Lighting Company Ltd & 2 others [2017] eKLR* held as follows:

' Where a suit abates, no fresh suit can be brought on the same cause of action because it is extinguished and cannot be maintained in the form it was originally presented. Because the suit will only abate where, within one year of the death of the Plaintiff no application is made to cause the legal representative of the deceased Plaintiff to be joined in the proceedings, it is imperative and we may add, logical, where the legal representative is not so joined within one year, that an application be made for extension of time to apply for joinder of the deceased Plaintiff's legal representative. It is only after the time has been extended that the legal representative can have capacity to apply to be made a party. Order 24 must be construed by reading it as a whole and the sequence in which it is framed must be followed without short circuiting it. The proviso to rule 3(2) to the effect that the court may, for good reason on application, extend the time goes to show that without time being extended, no application for revival or joinder can be made. It is the effluxion of time that causes the suit



to abate. It is that time that must, first be extended. Once time has been enlarged, only then can the legal representative bring an application to be joined in the proceedings. Again, it is only after the legal representative has been joined as a party that he can apply for the revival of the action. In our view there is nothing objectionable to making an omnibus application for all the three prayers. But it is incompetent to seek joinder or revival when the prayer for more time to apply has not been granted.'

28. The Applicant has attached to his supporting the death certificate which confirms that the Plaintiff died on July 2, 2019. There is no doubt, therefore, that the suit has abated.
29. Under the provisions of order 24 Rule 3, the court has discretion to extend time within which to apply for joinder provided the applicant gives good reason. The Applicant deposes that the deceased Plaintiff was always ready and willing to prosecute this suit but died before she could have the suit prosecuted. The Applicants also depose that after the Plaintiff's demise, they instructed counsel to file an application for grant of letters of administration but there was delay in obtaining the said grant which he attributes to the unprecedented disruptions caused by the Covid-19 pandemic.
30. I find that the applicant has shown good reason and is therefore deserving of this court's discretion to extend time within which to file the application for joinder.

**B. Whether the suit should be revived.**

31. Order 24 Rule 7 provides that the legal representative of a deceased Plaintiff may apply for an order to revive a suit which has abated or set aside an order of dismissal and if it is proved that he was prevented by any sufficient cause from continuing the suit, the court shall revive the suit upon such terms as to costs or otherwise as it thinks fit.
32. The Applicants have deposed that they, through their former advocate, petitioned for grant of letters of administration and the grant was only issued on July 7, 2021. They further depose that their former advocate took longer to obtain the said grant due to the disruptions caused by the Covid-19 pandemic.
33. The Applicants have reiterated their commitment to heard the suit heard expeditiously and also state that no prejudice will be occasioned to the defendant as the loan issued by the defendant has been repaid and the suit seeks orders of discharge of charge.
34. In the circumstances, I find that the Applicants have shown sufficient cause and further that it is in the interest if justice that this suit be revived.

**C. Whether the Plaintiff should be substituted with the Administrators of her Estate.**

35. Bearing in mind my finding in (A) and (B) above, I answer this question in the affirmative.

**Disposition.**

36. In view of the foregoing, the application dated September 12, 2022 is hereby allowed in the following terms:
  - a. Time within which to apply for joinder of the legal representatives of the deceased Plaintiff is hereby extended.
  - b. Mathew Johnston Muburi, Josephine Joan Wathi Muburi and Evelyn Njoki Muburi, the administrators of the estate of the plaintiff herein Teresa Kirangari- Muburi (Deceased), are hereby joined to this suit as joint Plaintiffs in substitution of the deceased Plaintiff.



- c. This suit is hereby revived.
- d. The costs of this application shall be in the course.

37. It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAKURU THIS 28<sup>TH</sup> DAY OF MARCH, 2023.**

**L. A. OMOLLO**

**JUDGE**

In the presence of: -

Mr. Wamai for plaintiff/Applicant.

No appearance for the Defendant/Respondent.

Court Assistant; Ms. Monica Wanjohi.

