



REPUBLIC OF KENYA



KENYA LAW
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**Ngugi v Attorney General (Civil Suit 20 of 2019)
[2022] KEHC 11245 (KLR) (28 July 2022) (Ruling)**

Neutral citation: [2022] KEHC 11245 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CIVIL SUIT 20 OF 2019
RB NGETICH, J
JULY 28, 2022**

BETWEEN

MOSES NDEGWA NGUGI PLAINTIFF

AND

ATTORNEY GENERAL DEFENDANT

RULING

1. This a ruling on notice of motion application dated 10th February 2022, and filed on 12th April 2022 brought under the provisions of Order 51 Rule 1 and 4 of the [Civil Procedure Rules](#), seeking the following orders:
 - (a) The court does issue an order substituting the plaintiff with Phillys Njeri Ngugi as his legal representative.
 - (b) That the court does issue an order that Phillys Njeri Ngugi do continue with the suit.
 - (c) Costs of the application.
2. The application is premised on the grounds that the applicant is the biological mother of the plaintiff who has been living with the plaintiff at Kimunyu- Gatundu County. The applicant averred that the plaintiff was abducted on 1st September 2021 at around 4.00 pm by unknown persons as he was going about with his Boda Boda business and to date he has not been seen nor heard. The motorcycle Reg no. KMEY 288Y in which he was riding was found abandoned at the scene of the abduction.
3. She averred that the matter was reported at the police station and efforts to trace the plaintiff have become futile and if the substitution is not done the matter will abate for lack of prosecution yet it has a high probability of success. That it is in the interest of justice that the applicant is allowed to substitute the plaintiff.



4. The application is supported by the annexed affidavit of Phillys Njeri Ngugi in which she deposes the plaintiff who is her son was abducted on 1st September, 2021 with no traces of his whereabouts despite numerous searches. She wishes to be substituted in the matter and proceed to prosecute the matter.

Analysis And Determination

5. The law governing the substitution of a deceased plaintiff is Order 24 Rule 3 of the Rules. The law under that Rule provides:-

“ 3(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 subrule (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.”

6. From the above provision, it is upon death of the sole plaintiff or the only surviving plaintiff and on the application, the court has the discretion to substitute the deceased plaintiff and that even after the suit abates, there is jurisdiction in the court to extend time.
7. From the evidence, the applicant contends the plaintiff was abducted on 1st September 2021 and he has never been traced since then, she is apprehensive that unless the plaintiff is substituted the suit will abate as it is close to one year since the disappearance of the plaintiff.
8. From the legal provision above a deceased person is substituted by a legal representative in order to proceed with the matter. In the instant case, there is no prove that the plaintiff is dead; the position is the plaintiff has been missing since September 2021.
9. In the circumstances, I do find the application is merited and the same is allowed. The applicant is allowed to substitute the plaintiff herein.
10. There is no prove that the plaintiff is dead to warrant substitution. The applicant has not also demonstrated that the action herein will survive the dead of the plaintiff in the event it is proved that he is deceased.
11. From the foregoing, I see no merit in the application.
12. Final Orders:-
 1. Application is hereby dismissed.
 2. No orders as to costs.

RULING DELIVERED, DATED AND SIGNED VIRTUALLY AT KIAMBU

THIS 28TH DAY OF JULY, 2022

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RACHEL NGETICH



JUDGE

In the Presence of:

Kinyua – Court Clerk

