



Thomas v Kariuki & another (Being the personal representative of the Estate of Stephen Mungai Kamau) (Environment & Land Case 1293 of 2015) [2023] KEELC 22622 (KLR) (12 June 2023) (Ruling)

Neutral citation: [2023] KEELC 22622 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 1293 OF 2015**

**EK WABWOTO, J
JUNE 12, 2023**

BETWEEN

BEATRICE ASHITIVA THOMAS PLAINTIFF

AND

ELIZABETH NJOKI KARIUKI & GEORGE MACHEHO MUNGAI (BEING THE PERSONAL REPRESENTATIVE OF THE ESTATE OF STEPHEN MUNGAI KAMAU) PROPOSED DEFENDANT

RULING

1. The plaintiff in her application dated October 20, 2022 seeks orders for revival of her abated suit and equally extension of time to substitute the defendant Stephen Mungai Kamau (deceased) with his legal representatives Elizabeth Njoki Kariuki and George Macheho Mungai.
2. The application was premised on the grounds that the defendant passed away sometimes in the year 2016 however it was not until July 28, 2022 when the matter had come up for hearing that the plaintiff came across the said information. Upon learning of the same, she immediately instructed her advocates on record to take the necessary steps to secure her claim against the defendant. The application was supported by the affidavit sworn by the plaintiff October 20, 2022.
3. The application was opposed by the defendant vide a replying affidavit sworn by George Macheho Mungai on March 18, 2023. It was deposed that in the instant suit no summons were served upon the defendant and no application for validity of summons was ever filed by the plaintiff. It was also averred that the plaintiff as far back as the year 2017 was aware of the demise of the deceased and it is not true that she only became aware of the same on July 28, 2022. The court was urged to dismiss the said application which according to the deponent was tainted with material non-disclosure.



4. Parties also made oral submissions in respect to the said application and subsequently filed their respective written submissions for consideration by the court.
5. The court has duly considered the application together with the written and oral submissions made by the parties. When a suit abates, no afresh 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 this is because the suit will only abate where within one year of the death of the party if no application is made to cause legal representative of the deceased to be joined in the proceedings where no 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 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.
6. Order 24 of the Civil Procedure Rules must be constructed by reading it as a whole and the sequence in which it is framed must be followed without short circulating it. The provisions to order 24 rule 3 (2) of the Civil Procedure Rules to the effect that the court may for good reason on application, extend time goes to show that without time being extended, no application for revival or order can be made. There is nothing objectionable to making an ambiguous application for the same.
7. The operating phrase in order 24 rule 7 (2) of the Civil Procedure Rules “sufficient cause” has been broadly and liberally defined in order to advance substantial justice. The explanation has to be reasonable and plausible to persuade the court and in the instant case, the court is satisfied with the reasons and explanation given by the applicant.
8. In the circumstances and in view of the foregoing, the application dated October 20, 2022 is hereby allowed in terms of prayers 2, 3 and 4. The amended plaint is to be filed and served within 7 days from today.
9. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 12TH DAY OF JUNE 2023.

E.K. WABWOTO

JUDGE

In the presence of:

Mr. Bariki for Plaintiff/Applicant.

Mr. Burugu for Defendant/Respondent.

Court Assistant – Caroline Nafuna.

