



Kanyori v Mutunkei & another (Sued as the legal representatives of the Estate of the Late Jeremiah Mutunkei Kiponyi) & another (Environment & Land Case 912 of 2017) [2023] KEELC 20417 (KLR) (28 September 2023) (Ruling)

Neutral citation: [2023] KEELC 20417 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND CASE 912 OF 2017
LC KOMINGOI, J
SEPTEMBER 28, 2023**

BETWEEN

SIMON KURIA KANYORI APPLICANT

AND

**CAROLINE JEMUTAI MUTUNKEI & NASERIAN MUTUNKEI (SUED AS THE LEGAL REPRESENTATIVES OF THE ESTATE OF THE LATE JEREMIAH MUTUNKEI KIPONYI) 1ST DEFENDANT
ATTORNEY GENERAL (SUED ON BEHALF OF THE REGISTRAR OF LANDS KAJIADO) 2ND DEFENDANT**

RULING

1. This is the Notice of Motion dated May 25, 2022 brought;
(Under Order 51 Rule 1, Order 24 Rules 3, 7 of the *Civil Procedure Rules* Section 1A, 1B, 3A of the *Civil Procedure Act* and all other enabling provisions of the law)
2. It seeks Orders that;
 1. This Court be pleased to extend time within which to substitute the Plaintiff (deceased) with a legal representative of his estate;
 2. This court be pleased to order that this suit, which has since abated by effluxion of time, be and is hereby revived;
 3. This Honourable Court be pleased to order that the deceased Plaintiff herein be substituted with the personal representatives of his estate, being Margaret Naomi Wangari Kuria;
 4. The costs of this Application be provided for.



3. The grounds are on the face of the application and are set out in paragraphs (a) to (g).
4. The application is supported by the affidavit of Margaret Naomi Wangari Kuria, Administrator and legal representative of the Estate of the late Simon Kuria Kanyori (Deceased), sworn on the 25th May 2022.
5. It appears the Application is not opposed. On the 8th February 2023 the Defendants/Respondents were granted fourteen (14) days to put in responses. On the 14th March 2023 Ms Shikali for Mr Kiproop for the 1st Defendant was present. It was not clear whether the 1st Defendant had filed a response.
6. On the same date, the court with the consent of the parties directed that the Notice of Motion be canvassed by way of written submissions.
7. By the time of writing this ruling, the 1st Defendant's/Respondent's submissions are not on record.
8. I have considered the Notice of Motion and the Affidavit in support. I have also considered the written submissions. The issue for determination is whether this application is merited.
9. Order 24 rule 7(2) of the Civil Procedure Rule, 2010 provides that;

“(2) The plaintiff or the person claiming to be the legal representative of a deceased plaintiff or the trustee or official receiver in the case of a bankrupt plaintiff may apply for an order to revive a suit which has abated or to 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 or set aside such dismissal upon such terms as to costs or otherwise as it thinks fit”.

10. In paragraph 7 of the supporting affidavit of Margaret Naomi Wangari Kuria, it is stated;

“That failure to substitute on time before the expiry of one year after the death of the plaintiff was not intentional as there were unsettled family issues which delayed the processing of the letters of administration. This also hampered issuance of proper instructions to the Plaintiff's advocates on record”.

11. I find that the Applicant has demonstrated sufficient cause.

In the case of *The A.G v The LSK & Another* cited with approval in the case of [*Geoffrey Mwangi Kibara v Muihoko Housing Company Ltd & 3 Others*](#) [2015] eKLR, the court observed as follows as to the meaning of sufficient cause;

“Sufficient cause or good cause in law means:-

“The burden placed on a litigant (usually by court rule or order) to show why a request should be granted or an action excused.” See Black's Law Dictionary, 9th Edition, page 251.

Sufficient cause must therefore be rational, plausible, logical, convincing, reasonable and truthful. It should not be an explanation that leaves doubt in a judge's mind. The explanation should not leave unexplained gaps in the sequence of events.”

12. I am satisfied that the Applicant has made out a good case to warrant the revival of the suit herein.
13. I hereby grant the following Orders;
 - a. That the time within which to substitute the Plaintiff is hereby extended.



- b. That the suit is hereby revived.
- c. That the deceased plaintiff is hereby substituted with his personal representative, Margaret Naomi Wangui Kuria.
- d. That costs of this application be borne by the Plaintiff/Applicant.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 28TH DAY OF SEPTEMBER 2023.

L. KOMINGOI

JUDGE.

IN THE PRESENCE OF:

Ms. Kemigisha for the Plaintiff.

Ms. Shikali for Mr. Kiprop for the 1st Defendant.

N/A for the A.G.

Court Assistant – Mutisya.

