



Koech v Koech & 3 others; Jepkorir (Applicant) (Environment & Land Case 15 of 2022) [2023] KEELC 20340 (KLR) (28 September 2023) (Ruling)

Neutral citation: [2023] KEELC 20340 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAPSABET
ENVIRONMENT & LAND CASE 15 OF 2022
MN MWANYALE, J
SEPTEMBER 28, 2023**

BETWEEN

GEOFFREY CHERUIYOT KOECH PLAINTIFF

AND

DAVID KIPKIURGAT KOECH 1ST RESPONDENT

EQUITY BANK (K) LIMITED 2ND RESPONDENT

THE LAND REGISTRAR 3RD RESPONDENT

THE ATTORNEY GENERAL 4TH RESPONDENT

AND

PERIS JEPKORIR APPLICANT

RULING

1. Before Court for determination is the Notice of Motion application dated 16/3/2022, seeking the following orders; -
 - a) Spent
 - b) That this Honourable Court be pleased to set aside the orders made on dismissing the Applicant’s suit and consequential orders thereto.
 - c) This Honourable Court be pleased to reinstate the suit herein and it be heard and determined inter vivos.
 - d) The Application seeks to have Peris Jepkorir to be substituted in place of the deceased Plaintiff who was her husband.



2. The application is based on grounds, inter alia, that the Applicant Peris Jepkorir Kitur, seeks to be substituted in place of the original Plaintiff's Geoffrey Cheruiyot Koech who has passed on.
3. The matter was dismissed on 24th July 2019 for non-attendance of Counsels for the parties, the non-attendance by the Applicant's Counsel on 24th July 2019 having been occasioned by unavoidable circumstances.
4. That the failure to communicate the non – attendance to the Court was the mistake of the Plaintiff's Counsel which should not be visited upon the Applicant.
5. The application is made timeously since there was the outbreak of Covid 19 pandemic and could not follow up the progress since there was an order to stay indoors.
6. That she has *prima facie* with probability of success.
7. The application is supported by the Affidavit of Peris Jepkorir Kitur who reiterates the grounds in support of the application and has annexed a death certificate of the (deceased) Plaintiff as well as copies of title deed and green card, and the order dismissing the suit for want of prosecution.
8. In opposition to the application, the 2nd Defendant has filed a Replying Affidavit through its Advocate Mr. Daniel L. Were, while the 3rd and 4th Defendants are not opposed to the application.
9. In his reply, Mr. Were Counsel for 2nd Defendant depones that on 3/4/2017 the Plaintiffs' Counsel informed Court that the Plaintiff had passed on, and on 24/7/2019, there was no substitution and the suit was dismissed for want of prosecution.
10. The 2nd Defendant further avers that the suit had abated in terms of orders 24 Rule 3. That it had taken the Applicant 3 years to challenge the dismissal order, which delay is inordinate and should not be entertained by the Court; and that in any event the Applicant has no *locus standi* to institute the present application in place of the deceased.
11. The 2nd Defendant thus urges the Court to dismiss the application.
12. Parties were directed to file submissions on the application. The Applicant opted to rely on the supporting affidavit as filed and did not file submissions, whilst the 2nd Defendant/Respondent filed its submissions.
13. I have perused and analysed the application the affidavits in support and in opposition and submissions on record and the Court frames the following as the issue for determination.
 - i) whether or not the Applicant has locus standi to file this instant application
 - ii) whether the application is merited.
14. The issue of locus standi was raised in the Replying Affidavit of Mr. Were Advocate for the 2nd Defendant. It is not in contention that Geoffrey Koech, the Plaintiff in this suit is now deceased. The Applicant having exhibited before Court the death certificate. The Applicant further describes herself as the widow of Geoffrey Cheruiyot Koech.
15. under Order 24 Rule 3, an application to revive a suit that has abated ought to be filed within one year even though the time to file the application may be enlarged. Such an application however ought to be filed an administrator of the Estate of the deceased.



16. The Applicant herein other than describing herself as the widow of Geoffrey Cheruiyot Koech has not exhibited before Court a Grant of Letters of administration that would give her locus to file the application before Court.
17. Consequently, the Applicant lacks *locus* to initiate the substitution application and revival of the suit that had been dismissed for want of prosecution.
18. In the result, the application having been filed by a stranger is hereby struck out and the suit remains dismissed for want of prosecution pursuant to the Orders made on 24/7/2019 by Hon. Lady Justice M. A. Odeny.

RULING, DATED AND DELIVERED AT KAPSABET THIS 28TH SEPTEMBER, 2023.

HON. M. N. MWANYALE

JUDGE.

