



**Mutua v Ikiugu (Environment and Land Miscellaneous Application
245 of 2014) [2023] KEELC 19876 (KLR) (21 September 2023) (Ruling)**

Neutral citation: [2023] KEELC 19876 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION 245 OF 2014
JO MBOYA, J
SEPTEMBER 21, 2023**

BETWEEN

JAMES WAWERU MUTUA APPLICANT

AND

DOUGLAS KIOGORA IKIUGU RESPONDENT

RULING

1. The Applicants herein had hitherto filed an Application dated the 4th of June 2023; and in respect of which same had sought for various reliefs. However, when the said Application came up for hearing, Learned counsel for the Applicants sought for and obtained Leave to file an amended Application, with a view to *inter-alia* incorporating additional reliefs.
2. Pursuant to and in exercise of the order granting Leave, the Applicant herein proceeded to and filed the amended Notice of Motion Application dated the 22nd June 2023; and in respect of which same has sought for the following reliefs;
 - i. That the firm of M/s Mulinge & Ochieng Co. Advocates be allowed to come on record for the Applicants in the place of Mwicigi Kinuthia & Co. Advocates.
 - ii. That this Honourable Court be pleased to revive the suit against the respondent.
 - iii. That this Honourable Court do extend time to substitute James Waweru Mutua (deceased) with his legal representatives and the suit against him be deemed as subsisting.



- iv. That the Honourable court be pleased to vary and/or set aside the court orders made on 22nd October, 2019 that culminated in the dismissal of the present application/suit.
 - v. That the Honourable court be pleased to reinstate the Appeal /application/ suit herein for hearing for the same to be determined on merit; [Verbatim]
 - vi. That Margaret Wanjiku Waweru & Stephen Mwangi Waweru be made Parties in this matter in the capacity of the applicants in place of James Waweru Mutua who is now deceased.
 - vii. That the costs of this application be provided for.
3. The instant Application is anchored and or premised on the grounds at the foot of the application thereof. Further, the Application is supported by the affidavit of one Stephen Mwangi Waweru sworn on the 22nd June 2023; and in respect of which the Deponent has annexed two documents.
 4. Upon being served with the initial Application dated the 4th June 2023, the Respondent herein filed a Statement of Grounds of opposition dated the 16th June 2023. Nevertheless, the Respondent subsequently filed a Replying affidavit sworn on the 27th June 2023; and wherein same disputed the averments contained at the foot of the supporting affidavit.
 5. First forward, the instant Application came up for hearing on the 5th July 2023, whereupon the advocate for the respective Parties proposed to canvass and ventilate the Application by way of written submissions. Consequently, the court proceeded to and issued directions for the filing and exchange of the written submissions by and on behalf of the respective Parties.

Submissions by the parties

Applicant's Submissions.

6. The Applicant herein filed written submissions dated the 7th July 2023; and in respect of which same has raised, ventilated and canvassed four salient issues for consideration by the Honourable court.
7. Firstly, Learned counsel has submitted that the current suit was hitherto being prosecuted by the Applicant, now deceased and that upon the death of the Applicant, the current Applicant herein was not aware of and/or privy of the existence of the current suit. In this regard, learned counsel has contended that the current Applicant only discovered and/or established the existence of the instant suit much latter, even though the timeline of such discovery has not been expressly stated and/or stipulated.
8. Secondly, Learned counsel has submitted that the current Applicant only procured and obtained the Grant of Letters of Administration on the 20th January 2021; and which Grant of Letters of administration was thereafter rectified on the 15th February 2022.
9. Be that as it may, Learned counsel for the Applicant has contended that despite obtaining the requisite Grant of letters of administration, the Applicants were unable to file and/or lodge the current Application timeously because of (sic) family wrangles, confusion, covid-19 issues and loss of income.
10. Nevertheless, counsel for the Applicant has submitted that the failure to promptly and timeously file the application should not deny and/or deprive the Applicant of the right to



have the subject dispute determined on merits. Furthermore, learned counsel has contended that unless the application herein is allowed, the Applicant herein shall suffer undue prejudice and a Miscarriage of justice, which the court should avert.

11. Thirdly, Learned counsel has submitted that even though the suit herein abated and was dismissed vide orders of the court issued on the 2nd October 2019; the court is still vested with the requisite Jurisdiction and discretion to set aside and or vary the orders of dismissal, if sufficient cause and basis are established by the Applicant
12. In this regard, Learned counsel has invited the court to take cognizance of the provisions of Order 24 Rule 7(2) of The Civil Procedure Rules, 2010.
13. Further and in addition, Learned counsel has also cited and relied on various decision on inter- alia the case of *Kishor Kumar Danji alias Vijay Kumar Mandal v Rajinda Kumar Mandal* (2021)eKLR, *Varsani v Amolack Singh & 4 Others* (2016)eKLR, *Mathenge Ngatia Ngari v Christopher Wang'ombe Ngatia & Another* (2020)eKLR and *James Mwaniki Kinuthi v Hemed Mukui & Another* (2021)eKLR, respectively.
14. Fourthly, Learned counsel for the Applicant has submitted that the Applicant herein has proffered and placed before the court sufficient basis, reasons and/or explanations, vindicating the reasons for the delay in the filing and/or lodgment of the current application.
15. In the premises, Learned counsel has contended that insofar as the Applicant has placed before the court sufficient cause, then the honorable court ought to grant the reliefs sought at the foot of the Application and thereby to allow the Applicant to be substituted in place of the deceased; and thereafter to prosecute the suit for purposes of determination on merits and not otherwise.
16. In support of the contention that the Applicant has placed before the court sufficient cause, Learned counsel for the Applicant has cited and relied on the decision in the case of *Issa Masudi Mwabumba v Alice Kavenya Mutumba 7 4 Others* (2012)eKLR and *Saaid Sulem Gethan Saanum v The Commissioner of Land (Sued through the Attorney General & Others)* (2015)eKLR.
17. In the premises and based on the foregoing, Learned counsel for the Applicant has implored the Honourable court to find and hold that the Application beforehand is meritorious and thus ought to be granted.

Respondent's Submissions:

18. The Respondent herein filed written submissions dated the 24th July 2023; and in respect of which same has raised, amplified and canvassed four (4) pertinent issues for consideration by the Honourable court.
19. First and foremost, Learned counsel for the Respondent has submitted that the Applicant herein was aware of and privy to the existence of the instant suit even prior to the death of the previous Applicant. In this regard, Learned counsel for the Respondent has added that the current Applicant and the rest of his family members used to attend the court proceedings alongside the previous Applicant, now deceased.
20. Secondly, Learned counsel for the Respondent has submitted that the instant application has been made with unreasonable and inordinate delay, amounting to more than seven (7) years from the date when the Applicant, now deceased, passed on.



21. Premised on the fact that the current Application has been made with inordinate delay, which counsel contend has not been explained, learned counsel for the Respondent has thus contended that the application is therefore defeated by the doctrine of Latches.
22. Thirdly, Learned counsel has submitted that the Applicant herein has neither availed nor espoused any cogent, credible and sufficient explanation to warrant the invocation and exercise of the equitable discretion of the court.
23. In the absence of credible and sufficient cause, Learned counsel for the Respondent has submitted that the Applicant herein has not met the threshold pursuant to the provision of Order 24 Rule 7(2) of The *Civil Procedure Rules*, 2010.
24. Fourthly, Learned counsel for the Respondent has submitted that the entire application before the court is muddled-up and thus incompetent for non-compliance with the provisions of Order 24 Rule 3(3) of the *Civil procedure Rules, 2010*. Consequently, learned counsel for the Respondent has invited the Honourable court to reject the current Application and to dismiss same with costs.
25. In support of the foregoing submissions, Learned counsel for the Respondent has cited and quoted the decision in the case of *Rebeca Mijide Mungole & Another versus Kenya Power & Lighting Company Ltd & 2 Others* (2017)eKLR.

Issues for Determination

26. Having considered the amended Notice of Motion Application, the Supporting Affidavit thereto; the Response filed by and on behalf of the Respondent and upon consideration of the written Submissions filed by the respective Parties, the following issues do arise and are thus germane for determination;
 - i. Whether the Advocate on record has the requisite Locus standi to file, mount, maintain and prosecute the current application or otherwise.
 - ii. Whether the instant Application is ripe and legally tenable taking into account the legal implications of Order 24 Rule 3(2) of The *Civil Procedure Rules, 2010*.
 - iii. Whether the instant Application has been made with unreasonable and inordinate delay and if so, whether the application is defeated by the Doctrine of Latches.
 - iv. Whether in any event, the Applicant has availed sufficient cause/ Good Reason; to warrant exercise of discretion in favor of the Application.

Analysis and Determination

Whether the Advocate on record has the requisite Locus standi to file, mount, maintain and prosecute the current Application or otherwise.

27. It is common ground that the current proceedings were being prosecuted by and on behalf of the Applicant, now deceased; through a designated advocate, namely, the firm of M/s Mwicigi Kinuthia & Company Advocates.
28. Furthermore, there is no gainsaying that up to and including the time when the suit was dismissed on the basis of abatement vide orders made on the 22nd October 2019; the Applicant, now deceased, was still being represented by the named firm of advocates.



29. Similarly, it is imperative to underscore that the dismissal of the suit vide the orders of the court made on the 22nd October 2019 constituted a Judgment in favor of the Respondent. For good measure, a dismissal order is indeed a Judgment in favor of the adverse Party. See the decision of the court of appeal in the case of *Njue Ngai v Ephantus Njiru Ngai & another* [2016] eKLR.
30. Insofar as there was already Judgment vide and on account of dismissal, the new firm of advocates could only come on record and be deemed to be lawfully on record upon compliance with the Provisions of Order 9 Rule 9 of the *Civil Procedure Rules, 2010*. In this regard, it behooved the new/incoming advocate to either procure and obtain the consent of the previous/outgoing advocate or to file an appropriate application for leave to effect change of advocate, which application by law ought to be served on all Parties, inter-alia the outgoing advocate.
31. Instructively, the current advocates for the Applicant were aware of the import and tenor of the provisions of Order 9 Rule 9 of the *Civil Procedure 2010*, and indeed included in the body of the amended Notice of Motion Application a prayer for leave to come on record in place of the previous/outgoing firm of advocates.
32. Nevertheless, despite having sought for the said prayer in the body of the Application, learned counsel for the Applicant, however failed to impress upon the court to entertain and to grant the limb relating to the leave to come on record at the 1st instance and/or prior to ventilating the substantive reliefs alluded to and or enumerated in the body of the Application.
33. For good measure, it is important to underscore that up to and including the time of crafting of this ruling, the limb seeking for leave to allow the current advocates to come on record for the Applicant has not been granted. In any event, it is evident that the limb is also the subject of the instant ruling, which relates to and or touches on the other substantive issues sought in the body of the Application.
34. It is my humble view that it behooved the learned counsel for the Applicant herein to impress upon the court to first and foremost deal with and dispose of the limb seeking for leave to come on record in the first instance and in any event, before proceeding to canvass and ventilate the substantive reliefs in the body of the Application.
35. In vindication of the foregoing position, it is appropriate to adopt and reiterate the explicit terms and tenor of Order 9 Rule 10 of the *Civil Procedure, 2010*. Instructively, the said provisions provides as hereunder;

Procedure [Order 9, rule 10.]

An application under rule 9 may be combined with other prayers provided the question of change of advocate or party intending to act in person shall be determined first.

36. Premised on the clear and unambiguous contents of the said rules, it is evident that the current Advocate who has prosecuted the instant application up to and including this point in time, does not have the requisite capacity, mandate and thus the locus standi to appear and prosecute the application beforehand.
37. Furthermore, even assuming, for the sake of arguments only (which is unnecessary) that the seeking of leave by itself, may be deemed to be leave itself (which is illogical); there is still yet another hurdle that the Applicant herein would face.
38. In this respect, it is imperative to underscore that even when an application for leave to come on record in place of the previous/outgoing advocate, has been allowed and/or granted, it is still incumbent



upon the incoming advocate to thereafter effect the change by filing the requisite Notice of change of advocate, in accordance with the provisions of Order 9 Rule 5 of the *Civil Procedure Rules, 2010*.

39. Instructively, the grant of the order allowing a party to effect change, by itself does not denote the effectuation of the change. In this respect, it is imperative to reproduce the provisions of Order 9 Rule 9 of the *Civil Procedure Rules*, which clearly states that such change or intention to act in person shall not be effected without an order of the court.

40. For good measure the provisions of Order 9 Rule 9, provides as hereunder;

Change to be effected by order of court or consent of parties [Order 9, rule 9.]

When there is a change of advocate, or when a party decides to act in person having previously engaged an advocate, after judgment has been passed, such change or intention to act in person shall not be effected without an order of the court—

- (a) upon an application with notice to all the parties; or
- (b) upon a consent filed between the outgoing advocate and the proposed incoming advocate or party intending to act in person as the case may be.

41. Essentially, the change of advocate can only be effected and/or better still operationalized by the filing and service of the requisite Notice of change of advocate and not otherwise. Indeed, in the absence of such Notice of change, the provisions of Order 9 Rule 13 of the *Civil Procedure Rules, 2010*; underscore that the previous advocate shall be deemed to remain on record in respect of the matter, including any appeal or subsequent proceedings.

42. Consequently and in the premises, there being no leave which has hitherto been granted to allow the current advocate to come on record and coupled with the fact that no notice of change of advocate was ever filed in compliance with Order 9 Rule 9 as read together with Order 9 Rule 5 of the *Civil Procedure Rules, 2010*, it suffices to point out that the current advocates herein has no locus standi to maintain and prosecute the application beforehand.

43. Before departing from the issue herein, it is imperative to reiterate that whereas this court is not shackled by procedural technicalities, as entrenched vide Article 159 (2)(d) of the *Constitution, 2010*; it must nevertheless be pointed out that the Rules of procedure cannot be disregarded with abandon by litigants and advocates.

44. Furthermore, it is appropriate to state that where such Rules of procedure are disregarded and there is no explanation tendered by the Party at fault, the court is called upon to enforce the cold letter of the law and thereafter let the hammer to fall at the door step of the defaulting Party.

45. To this end, I am reminded of the dictum of the Court of Appeal in the case of *Kakuta Maimai Hamisi v Peris Pesi Tobiko & 2 others* [2013] eKLR, where the court stated and held as hereunder;

“A five judge bench of this Court expressed itself very succinctly but a few days ago on this precise point is the case of *Mumo Matemu v. Trusted Society Of Human Rights Alliance & 5 Others* Civil Appeal No. 290 of 2012 as follows;

“In our view it is a misconception to claim, as it has been in recent times with increased frequency, that compliance with rules of procedure is antithetical to



Article 159 of the Constitution and the overriding objective principle under Section 1A and 1B of the Civil Procedure Act (Cap 21) and Section 3A and 3B of the Appellate Jurisdiction Act (Cap 9). Procedure is also a handmaiden of just determination of cases.”

46. On this score alone, the application by and on behalf of the Applicant herein, is premature, misconceived and otherwise stillborn. Consequently, the Application is a candidate for striking out.
47. Nevertheless, it is still imperative to venture forward and to consider the other pertinent issues, which were also highlighted as part of the issues for determination. Further and in any event, it is also appropriate for the sake of completeness.

Whether the instant Application is ripe and legally tenable taking into account the legal implications of Order 24 Rule 3(2) of The Civil Procedure Rules, 2010.

48. The Applicant herein concedes that indeed the previous Applicant, now deceased, died and or passed on the 29th June 2016. Consequently and in this regard, it was incumbent upon the Applicant and or such other legal representative of the deceased to file the requisite application for substitution within 12 months from the date of the death of the deceased. See Order 23 Rules 3(2) of the Civil Procedure Rules, 2010.
49. On the other hand, the Applicant herein is privy to and or knowledgeable of the fact that the current application was not filed within the stipulated timeline or at all. For good measure, it is evident that one of the reliefs being sought is extension of time to substitute the deceased by the current Applicant, who is the legal administrator of the estate.
50. Furthermore, the Applicant herein has also sought for revival of the suit which was dismissed on account of abatement. However, it is not lost on this court that the prayer for revival of the suit has been mounted long before an order for extension of time within which to join the Applicant has been granted.
51. Additionally, it is also important to state that the prayer of revival of the suit, which stands abated, has also been mounted long before the Applicant herein has been formally allowed to substitute the deceased in the current proceedings. Simply put, the Applicant herein is seeking revival of the suit before being joined and made a Party therein.
52. To my mind, it was incumbent upon the Applicant herein to first and foremost procure and obtain an order for extension of time within which to substitute the deceased and thereafter seek for the joinder, before eventually being disposed and or seized of the capacity to apply for the revival of the suit.
53. Instructively, the procedure to be followed and/or complied with where the timeline for substitution has lapsed and a suit has abated is well prescribed by dint of Order 24 Rule 3(2) of the Civil Procedure Rules, 2010; as well as the proviso thereto.
54. Additionally, the requisite procedure to be followed, whose details have been highlighted in the preceding paragraph was succinctly explained by the Court of Appeal in the case of Rebeca Mijide Mugole & Another v Kenya Power & Lighting Company Ltd & 2 Others (2017)eKLR.
55. For coherence, the court stated and observed as hereunder;

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. The learned Judge, supported by the authority of Joseph Gachuhi Muthanji (supra) was therefore right in dealing with that aspect of the application in the manner he did.

56. From the clear exposition and elaboration of the law, in terms of the decision (supra), it is evident and apparent that the current Application by the Applicant is not muddled-up, but is similarly omnibus and thus same becomes fatally defective and beyond redemption.
57. Consequently and in my humble view, the current application would also have failed the 2nd hurdle and thus; I would have been constrained to dismiss same, for being bad in law and Legally untenable.

Whether the instant Application has been made with unreasonable and inordinate delay and if so, whether the Application is defeated by the Doctrine of Latches.

58. It is evident from the supporting affidavit filed by and on behalf of the Applicant that the deceased indeed died and or passed on the 29th June 2016. Further, it is also apparent that the Applicant herein sought for and obtained Grant of letters of administration over and in respect of the Estate of the deceased on the 20th January 2021.
59. Instructively, upon procuring and obtaining the Grant of letters of administration in respect of the Estate of the deceased, the Applicant herein was vested and or conferred with the requisite locus standi to mount the requisite application and/or take such other legal actions, inter-alia making the current application. See Section 82 of the Law of Succession Act, Chapter 160 Laws of Kenya.
60. Nevertheless, despite having procured and obtained the Grant of letters of administration on the 20th January 2021; the Applicant did not deem it fit and/or expedient to file and/or mount the current application with due promptitude and/or dispatch.
61. In any event, it is not lost on the court that the current application was not filed until the 4th June 2023, before same was ultimately amended on the 22nd June 2023; amounting to a duration of more 2 ½ years from the date when the Grant of letters of administration was issued.
62. It cannot be over emphasized that a duration of 2 ½ years is indeed unreasonable and inordinate and hence it was incumbent upon the Applicant to tender and/or place before the court some cogent, credible and/or reasonable explanation for such delay or better still inaction.
63. However, from the body of the supporting affidavit, the only reason which has been advanced by the Applicant herein to explain the lengthy and inordinate delay is to the effect that the instant application



could not be filed in time due to family wrangles issues, covid-19 confusion and loss of income. See paragraph 11 of the supporting affidavit.

64. Other than the blatant statement, whose details have been highlighted in the preceding paragraph, there is no other explanation and/ or reason which have been ventilated nor provided.
65. Be that as it may, the Applicant herein expects and imagined that a court of law is expected to act on such blatant and bare allegations/averments, which are devoid of flesh and/or substratum. Surely, the Applicant ought to have been serious, if at all, same was keen to partake of and/or benefit from the Equitable discretion of this court.
66. Furthermore, where there is unreasonable and inordinate delay, which has not been explained, the Doctrine of Laches becomes relevant and applicable. Instructively, the doctrine of Laches illuminates and highlights the Equitable principles which denotes that “Equity aids the vigilant and not the indolent.”
67. To underscore the import and implication of the Doctrine of Laches, it is appropriate to cite and reiterate the dictum of the Court of Appeal in the case of *Chief Land Registrar & 4 others v Nathan Tirop Koech & 4 others* [2018] eKLR, where the court stated and observed as hereunder;

55. Laches means the failure or neglect, for an unreasonable length of time, to do that which by exercising due diligence could or should have been done earlier; it is negligence or omission to assert a right within a reasonable time, warranting a presumption that the party entitled to assert it either has abandoned it or declined to assert it. This equitable defense is based upon grounds of public policy, which requires the discouragement of stale claims for the peace of society. (See *Republic of Phillipines v. Court of Appeals*, G.R. No. 116111, January 21, 1999, 301 SCRA 366, 378-379).

68. Simply put, the instant application, which on the face of it has been mounted and/or lodged approximately seven (7) years from the date of death of the Applicant, now deceased, is certainly defeated Laches.

Whether in any event, the Applicant has availed sufficient cause/ Good Reason; to warrant exercise of discretion in favor of the application.

69. It is not in dispute that where the time for substitution of a deceased party, has lapsed and/or expired; the court is still vested with the requisite discretion to extend and/or enlarge time for purposes of effecting substitution. See Order 24 Rule 3(2) of the *Civil Procedure Rules 2010* and in particular the proviso thereof.
70. Similarly, it is also imperative to underscore that even when the suit itself has abated and/or been dismissed on account of abatement, the court is still imbued with discretion to set aside, vary and/or vacate the order of dismissal. Instructively, the discretion of the court to this case, is donated by the provision of Order 24 Rule 7(2) of the *Civil Procedure Rules, 2010*.
71. However, the question that begs determination and answer is under what circumstances is the court to grant the order for extension of time and/or variation of the dismissal on account of abatement.



72. In this respect, it is important to state and underscore that the answer to the question herein is well delineated by the provisions of Order 24 Rule 7(2) of the [Civil Procedure Rules, 2010](#), which stipulates and provides as hereunder;

(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.

73. Evidently, the discretion of the court in setting aside and/or varying a dismissal on account of abatement can only be granted if the Applicant places before the court sufficient reason; which must be reasonable, cogent, credible and plausible to provoke the exercise of equitable. See the holding of the Court in the case of [Andrew Kariuki Njoroge versus Paul John Kimani](#) (Civil Application Nai. E049 OF 2022)[2022] KECA 1188(KLR), paragraphs 12 and 13 thereof, where the Honourable elaborated on the point.

74. Furthermore, the significance of establishing and providing good reason, which is the other name of sufficient cause, was calibrated upon and espoused by the Court of Appeal in the case of [Said Sweilem Gheithan Saanum versus Commissioner Of Lands \(being sued through Attorney General\) & 5 others](#) [2015] eKLR, where the court stated and held thus;

Thirdly, the legal representative 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.

75. Furthermore, the court proceeded and held as hereunder;

The fact that the dispute involved land which is claimed to be the only asset of the deceased’s estate and is of high value per se ought to have been the more reason for both the appellant and her counsel to be vigilant. Other reasons advanced for the revival of the suit, such as the appellant’s lack of literacy, poor health, advanced age, bereavement, depending on the circumstances may be relevant considerations but do not in themselves constitute sufficient cause, particularly in view of the fact that the appellant was represented by counsel.

76. In my humble view, the Applicant herein has neither demonstrated nor placed before the court any scintilla of reasons or plausible explanation as to why the instant Application was not mounted timeously and with due promptitude, immediately the Grant of letters of administration was issued on the 20th January 2021, if at all.

77. Invariably, I am also alive to the fact that the Applicant herein as also not explained and/or accounted for the delay in filing the requisite application for issuance of Grant of letters of administration from the date of death of the Applicant, now deceased, which was similarly inordinate.

78. In a nutshell, the sum total of the delay, whether reckoned from the date of death of the Applicant, now deceased, to the date of dismissal of the suit on 22nd October 2019; or from the date of dismissal to the date of application for Grant of letters; and finally from the date of Grant of letters to date of filling of application; bespeak of inordinate delay, which has not been accounted for.



79. Furthermore, it is imperative to point out that Equitable discretion ought not to be exercised in favor of a Party who has hitherto shown and/or exhibited indifference, negligent conduct or better still, gross inaction, like the one beforehand.
80. In the circumstances, irrespective of which angle one looks at the current application, there is no gainsaying that the extent of delay beforehand defeats exercise of equitable discretion. Consequently, the provisions of Article 159 (2) (b) of the Constitution 2010, militates against the grant of the orders sought.

Final Disposition

81. From the foregoing analysis, which includes, *inter-alia*, the legal competence of the impugned Application, as well as the merits thereof, it is evident, nay, apparent that the Application beforehand is misconceived, bad in law and otherwise Legally untenable.
82. Consequently and in the premises, I come to the conclusion that the Application dated the 22nd June 2023; is devoid and bereft of merits and same be and is hereby dismissed with costs to the Respondent, to be agreed upon and in default, to be taxed by the Deputy Registrar of the Environment and Land Court, in the usual manner.
83. It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 21ST DAY OF SEPTEMBER 2023.

OGUTTU MBOYA

JUDGE

