



Mosonik (Suing as the legal administratrix of the Estate of Antony Kiprono Mosonik (Deceased) v Abdi (Sued as the legal administrator of the Estate of Fatuma Ali (Deceased); Chepng'eno (Suing as the legal representative of the Estate of Lucy Chepkemoi Mosonik (Deceased) (Proposed Applicant) (Environment & Land Case 38 of 2013) [2023] KEELC 22408 (KLR) (14 December 2023) (Ruling)

Neutral citation: [2023] KEELC 22408 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT & LAND CASE 38 OF 2013**

LA OMOLLO, J

DECEMBER 14, 2023

BETWEEN

LUCY CHEPKEMOI MOSONIK (SUING AS THE LEGAL ADMINISTRATRIX OF THE ESTATE OF ANTONY KIPRONO MOSONIK (DECEASED) PLAINTIFF

AND

ZAINAB UMAR ABDI (SUED AS THE LEGAL ADMINISTRATOR OF THE ESTATE OF FATUMA ALI (DECEASED) DEFENDANT

AND

ESTHER CHEPNG'ENO (SUING AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF LUCY CHEPKEMOI MOSONIK (DECEASED) PROPOSED APPLICANT

RULING

1. This ruling is in respect to the Applicant's Notice of Motion application dated 15th February, 2023. The said application is expressed to be brought under Order 24 Rule 3, Order 24 Rule 7(2) and Order 51 Rule 1 of the Civil Procedure Rules, 2010 and Sections 1A, 1B and 3A of the [Civil Procedure Act](#), Cap 21 Laws of Kenya.
2. The application is filed under Certificate of Urgency and seeks the following orders:
 - a. Spent
 - b. That the Honourable Court be pleased to revive the abated suit as against the Defendant/ Respondent herein.



- c. That this Honorable Court be pleased to grant leave and enlarge time for the Plaintiff/Applicant to substitute the Plaintiff herein Lucy Chepkemoi Mosonik- Deceased with the name of Proposed Substitute/Applicant Esther Chepng'eno who is now the legal representative of the Estate of Lucy Chepkemoi Mosonik- Deceased.
 - d. That the Honorable Court be pleased to substitute Esther Chepng'eno in place of the Plaintiff Lucy Chepkemoi Mosonik (deceased) as the Legal Administrator of the Estate herein.
 - e. That this Honorable Court be pleased to issue directions as to the hearing of the suit herein.
 - f. That the costs of this application be provided for.
3. The application is based on the grounds on its face and supported by the affidavit sworn by the Applicant, one Esther Chepng'eno. The Supporting affidavit is sworn on the 14th February, 2023.

Factual Background.

4. The application was placed before court on 20th February, 2023.
5. On 23rd February, 2023, the Defendant/Respondent was given more time to file her response and the application was set for hearing on 14th March, 2023.
6. On 14th March, 2023, counsel for the Applicant confirmed receipt of the Defendant's/Respondent's response and the Court directed that the application shall be heard by way of written submissions.
7. On 14th June, 2023, parties confirmed having filed their submissions and the matter was reserved for ruling.

Applicant's Contention.

8. The Applicant deposes that she is the Proposed Plaintiff/Applicant and the matter relates to the Estate of Lucy Chepkemoi Mosonik who died on 8th August, 2020.
9. It is her deposition that her capacity arises from the grant of letters of administration Ad Litem issued on the 19th December, 2022 in Nakuru Probate And Administration Cause No E409 of 2022.
10. It is her further deposition that Lucy Chepkemoi Mosonik was the Plaintiff in the suit herein and she instituted this suit against the Defendant vide a Plaint dated 6th February, 2015 seeking a Permanent injunction against the Defendant and her agents from trespassing and interfering with the parcel of land known as DUNDORI/MUGWATHI BLOCK 2/311 KOELEL measuring approximately 1.2 Hectares, a declaration that the decision of Bahati land dispute tribunal adopted as a decree of Nakuru CMCC NO. 39 OF 2009 a nullity and an order directed to the Land Registrar Nakuru cancelling the title held by the defendant and issuing one in the name of the Plaintiff.
11. She deposes that this suit is still pending in court and the cause of action in the suit survives the deceased.
12. She contends that arising from the grant of letters of administration ad litem for purposes of prosecuting the suit herein, she has the capacity and authority to represent the estate of the deceased hence her application for substitution in place of the deceased.
13. The Applicant further contends that she is aware that the suit against the Defendant has since abated by operation of law and seeks that the said suit be reinstated and/or revived in the interest of justice and for the suit to be heard and determined on merit.



14. She deposes that she is desirous of pursuing this matter for the benefit of the estate of Lucy Chepkemoi Mosonik (deceased) as it relates to the above mentioned parcel of land forming part of the estate of the deceased.
15. She deposes that the subject matter herein is land which is very emotive hence the just application for substitution for the just determination of this suit.
16. She deposes that the pendency of this suit without a representative of the deceased is injurious to the estate and interest thereon and she wishes to protect the said interest hence the filing of this application herein seeking to have herself substituted in place of the deceased.
17. The Applicant contends that the interests of the estate of the deceased can only be adequately protected when he is represented in the proceedings herein.
18. She contends that the suit herein can only be conclusively and adequately determined when the deceased is represented as the said representation is an integral part in the determination of this suit on merit.
19. She further deposes that it is in the interest of justice that she be substituted in place of the said Lucy Chepkemoi Mosonik (deceased) for the proper determination of this matter.

Respondent's Response.

20. In response to the application, the Respondent filed a replying affidavit sworn on 3rd March, 2023 sworn by the Defendant/Respondent.
21. The Defendant/Respondent states that the application is filed in bad faith, vexatious, dilatory, incompetent and lacks merit.
22. She deposes that the suit was instituted by the deceased way back on the 12th February, 2015 and the matter has never taken off due to the actions and conduct of the Plaintiff who unfortunately is now deceased.
23. She deposes that in the course of the matter the Defendant also passed on before the matter could be heard and was timeously substituted by the current Defendant.
24. It is her deposition that from the death certificate annexed to the application by the Applicant, the Plaintiff died way back on the 8th August, 2020.
25. She deposes that from the Letters of Administration Ad-litem annexed to the application by the Applicant, she obtained letters of administration Ad-litem later way back on the 19th December, 2022.
26. It is her deposition that in the application, the Applicant has not explained to the court why the application was not timeously filed. She also deposes that there is no explanation why the Applicant obtained Letters of Administration on 19th December, 2022 only to use the same to file this application on the 20th February, 2023.
27. She further deposes that the Plaintiff died on the 8th August, 2020 and there is no sufficient explanation why the application is being filed on the 20th February, 2023 after more than 3 years.
28. She relies on Order 24 Rule 3 (2) of the Civil Procedure Rules and deposes that if the Plaintiff died on 8th February, 2020, since no relevant application was made by a personal representative of the estate of the deceased Plaintiff within a period of 1 year, the suit abated.



29. She deposes that no suit exists as the suit has abated. She deposes that an abated suit can be revived by the court but only through a proper application and with good reasons.
30. It is her deposition that she is prejudiced by the dilatory actions of the Applicant and the Plaintiff that have led to delays in this matter. She deposes that the Applicant is guilty of inordinate delay and has not even attempted to explain reasons for the delay.
31. She deposes that the application is within the discretion of the Honourable Court and she prays for the dismissal of the suit with costs but in the event the Honourable Court decides to indulge the Applicant they should pay costs not less than Ksh 50,000/= and stand directed for an early hearing date.

Applicant's Further Contention.

32. The Applicant filed a Supplementary Affidavit on 17th April, 2023 and she deposes that the Replying Affidavit herein is misplaced, and the same is deliberately and deceitfully drafted so as to obstruct and/or defeat the cause of justice by prejudicially denying her much needed orders from this Honourable Court.
33. It is her deposition that she is desirous of pursuing this matter for the benefit of the estate of Lucy Chepkemoi Mosonik (deceased) as it relates to the above mentioned parcel of land forming part of the estate of the deceased.
34. It is her further deposition that the subject matter herein is land which is very emotive hence the just application for substitution for the just determination of this suit. She contends that failure to substitute the deceased in respect of the suit parcel of land will be extinguished and the pendency of this suit without a representative of the deceased is injurious to the estate and interest thereon.
35. She contends that the cause of action in the suit survives the deceased and the application for substitution was filed as soon as the Applicant obtained the Letters of Administration Ad-litem.
36. The Applicant further contends that her brothers were unaware that they needed to take out Letters of Administration Ad-litem which caused the delay in taking out the Letters of Administration.
37. She deposes that it only came to their attention after the citation was filed in court and they agreed that she should take out the Letters of Administration Ad Litem, which was done expeditiously.
38. The Applicant further deposes that there was no inordinate delay in filing this Application as she obtained the Letters of Administration Ad-litem on 19th December, 2022 after which she filed this Application on 15th February, 2023.
39. She contends that no injury/prejudice will be occasioned to the opposite party and states that the Application seeking orders of revival of the suit herein is made bona fide and will not cause undue delay, or in any way unfairly prejudice the other party, the same is neither irrelevant nor useless, as it raises issue on substantive matters of merit and not merely technical points and/or issues.
40. The Applicant further deposes that from the foregoing it is clear that the Respondent herein seeks to adopt underhanded tactics and ploys to once more dupe this very court, so as to deny her an opportunity to litigate the issues in contention to their natural conclusion.
41. She contends that the Ksh 50,000/= in costs being prayed for by the Defendant is extremely exorbitant. She deposes that the proposed substitute has shown sufficient cause and proven that there was a legitimate explanation for the delay and all the while they have demonstrated that they took steps to ensure that the suit would be heard timeously and as such no costs should be awarded to the Defendant



42. She deposes that it is in the interest of justice that she be substituted in place of the said Lucy Chepkemoi Mosonik (deceased) for the proper determination of this matter.

Issues For Determination.

43. The Applicant filed submissions on 17th April, 2023.

44. She submits that it is necessary that the Plaintiff/Applicant is given an opportunity to protect the above property as this would result in irreparable loss. She submits that land is highly emotive and the epitome of ownership and belonging in a community.

45. The Applicants relies on the judicial decisions of Said Sweilem Gheithan Saannum v Commissioner of Lands & 5 others [2015] eKLR and Kishor Kumar Dhanji Varsani v Amolak Singh & 4 others [2016] eKLR.

46. The Applicant submits that Plaintiff died on 8th August, 2020 and as such the suit abated after one year. She submits that however, the proposed Applicant was desirous of having the matter determined on merit to protect both the interest of the estate and that of the Plaintiff. She submits that however in the Applicant's timeline it is clear that once she received the Letters of Administration, she filed the suit as timeously as possible.

47. The Applicant submits that the delay in filing of the suit can be attributed to the fact that the family of the Deceased was not aware that they needed to take out Letters of Administration and as such the suit abated without their knowledge.

48. She submits that due to the unique nature of African customs and traditions, the male beneficiaries were supposed to take out the Letters of Administration Ad-litem but they failed to do so in good time.

49. She submits that after a citation was filed by the Applicant that they became aware and upon agreement the Applicant took out the letters which were granted on 19th December, 2022 and the application filed on 15th February, 2023.

50. The Applicant submits that she has demonstrated sufficient cause and/or reason to enable this court to exercise its discretion to extend time for substitution of the deceased Plaintiff.

51. The Applicant submits that the Defendant in her replying affidavit has insisted that the Plaintiff is guilty of inordinate delay and with no explanations and as such the Applicant's application should be dismissed.

52. It is also the Applicant's submission that on the contrary, the Applicant has shown willingness and that she has taken the necessary steps to ensure the matter was heard. She submits that she has a legitimate explanation for the delay that should be taken into account as well as the steps taken by the Applicant once the letters were granted.

53. The Applicant relies on the judicial decision of Peter Wanjohi Thumbi v Njoki Kanyuru [2020] eKLR and submits that the timelines in this matter are the same as those in the above mentioned case. She submits that the Applicant obtained letters on 19th December, 2022 and filed the instant application on 15th February, 2023 showing her determination to have her matter heard and determined on merit.

54. She submits that she has shown sufficient cause for the delay. She submits that she has also shown willingness to prosecute her case and it would be just for this Honorable Court to revive this suit.

55. The Applicant also submits that it is necessary that she be given an opportunity to protect the above property as this would result in irreparable loss. She submits that she has shown sufficient cause for



- the delay and has demonstrated her willingness and desire to have the matter heard and determined on merit.
56. It is the Applicant's submission that it is necessary that the suit is reinstated and the Plaintiff be substituted so that the matter can be determined on a priority basis, to allow the Plaintiff/Applicant some form of justice. She submits that from the foregoing, the Applicant is entitled under Article 50 of *the Constitution* of Kenya 2010 to a right to a fair hearing and the right to be heard and have issues herein decided on merit with finality and not on procedural technicalities that are most times beyond their control.
 57. She submits that it is well established that costs follow the event in any cause, action, matter or issue upon its dismissal for being bad in law or bereft of merit.
 58. She also submits that she is entitled to the order sought and the present application is the Applicant's recourse in protecting both the interests of the Deceased and her estate. She submits that it is on the interest of justice that this Honorable Court allows this application to enable the proposed Plaintiff prosecute and finally settle this matter.
 59. The Respondent filed her submissions on 13th June, 2023.
 60. The Respondent submits that the suit has abated. She submits that the Plaintiff died on 8th August, 2020 and no application was made to substitute the deceased within one year as required by law.
 61. It is the Respondent's submission that the Applicant obtained Letters of Administration Ad-litem on 19th December, 2022 and only used them and filed this application on 15th February, 2023 after a duration of about two months.
 62. She submits that there has been no attempt by the Applicant to explain the delay in filling the application. She submits that the application is within the discretion of the Honourable Court but which discretion must be exercised judiciously.
 63. It is the Respondent's submission that the Honourable Court can extend time but only with good reasons furnished by the Applicant. She submits that in the application, the Applicant has not even attempted to explain the reason for the delay leading the suit to abate and the reason is it has taken long to file this application.
 64. The Respondent submits that the fact of the suit having abated is admitted by the Applicant and the same should be marked abated with costs to the Respondent. She submits that the application should be dismissed as the same has no merit.
 65. The Respondent also submits that the application is within the discretion of the Honourable Court to determine and for any reason the court sees it fit to allow the same it should take into account the prejudice to the Respondent occasioned by the applicant and should award throw away costs of Ksh 50,000/=

Analysis And Determination.

66. I have considered the application, the affidavits in support of the application, the replying affidavit and submissions filed.
67. In my view, the questions that arise for determination are:
 - a. Whether time should be enlarged for the Applicant to substitute the deceased Plaintiff.
 - b. Whether orders of substitution should issue.



- c. Whether the court should grant orders reviving this suit.
- d. Who should bear the cost of this application?

A. Whether time should be enlarged for the Applicant to substitute the deceased Plaintiff.

68. The Court of Appeal in the case of *Rebecca Mijide Mungole & another v Kenya Power & Lighting Company Ltd & 2 others* [2017] eKLR held as follows:

“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 (Emphasis is mine). 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. (Emphasis is mine). But it is incompetent to seek joinder or revival when the prayer for more time to apply has not been granted.”

- 69. In the Applicant has attached the death certificate which confirms that the Plaintiff died on 8th August 2020. There is no doubt that the suit has abated.
- 70. Under the provisions of order 24 Rule 3, the court has discretion to extend time within which to apply for joinder provided the Applicant gives good reason.
- 71. In her Supplementary Affidavit sworn on 14th April, 2023 the Applicant deposes that her brothers were unaware that they needed to take out Letters of Administration Ad-litem which caused the delay in taking out the Letters of Administration, that it only came to their attention after the citation was filed in court and they agreed that she should take out the Letters of Administration Ad-Litem which was expeditiously done.
- 72. I find that the applicant has shown good reason and is therefore deserving of this court’s discretion to extend time within which to file the application for joinder.

B. Whether order of substitution should issue.

73. The Applicant seeks an order that this Honourable Court be pleased to substitute the Applicant in place of the deceased Plaintiff as the legal representative of her estate. The Applicant in her application has attached a copy of the limited grant of the Letters of Administration Ad litem.



74. In the judicial decision of *Clemence Mkangoma & another v T.S.S. Transporters Co. Ltd* [2021] eKLR, it was stated thus;

“Of concern and material to the facts of this particular case, are the Limited Grant of Letters of Administration Ad Litem and the Limited Grant of Letters of Administration Ad Colligenda Bona. The former is provided for under Form 14 of the Fifth Schedule of the *Law of Succession Act* and is only invoked when the estate of a deceased person is required to be represented in court proceedings while the latter is usually used in an emergency for purposes of dealing with the property of a deceased person which is subject to waste or danger and where there is no sufficient time to obtain a full grant....” (Emphasis is mine)

75. The cause of action survives the deceased Plaintiff, in order that the suit proceeds, the Legal Representatives of the estate of the deceased Plaintiff needed authority. This authority has been given and it is in the nature of Letters of Administration Ad litem. I see no reason why the Applicant should not be granted orders substituting her in place of the deceased Plaintiff.

C. Whether the court should grant orders reviving this suit.

76. The Applicant in her supporting affidavit dated 14th February, 2023 deposes at paragraph 8 that she is aware that the suit has since abated and seeks that the said suit be reinstated and/or revived in the interest of justice and for the suit to be heard and determined on merit.

77. Order 24 Rule 3 of the Civil Procedure Rules 2010 provides as follows:

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 sub rule (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.

78. The evidence tendered is that the that the Plaintiff died on 8th August, 2020. This suit therefore abated on 8th August, 2021.

79. The Defendant/Respondent in her replying affidavit dated 3rd March, 2023 deposes that from the Letters of Administration Ad-litem annexed to the application, the Applicant obtained Letters of Administration way back on 19th December, 2022.

80. The Defendant/Respondent further deposes that the Applicant has not explained to the court why the application was not timeously filed. She also deposes that there is no explanation why the Applicant obtained Letters of Administration on 19th December, 2022 only to use the same to file this application on 20th February, 2023.

81. In her Supplementary Affidavit sworn on 14th April, 2023 the Applicant deposes at paragraphs 8, 9 and 10 that: the cause of action in the suit survives the deceased and the application for substitution



was filed as soon as the Applicant obtained the Letters of Administration Ad-litem, that her brothers were unaware that they needed to take out Letters of Administration Ad-litem which caused the delay in taking out the Letters of Administration, that it only came to their attention after the citation was filed in court and they agreed that she should take out the Letters of Administration Ad-Litem which was expeditiously done.

82. The Applicant in her Notice of Motion invokes provisions of Order 24 Rule 7 (2) which provides as follows:

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.

83. In the judicial decision of Patrick Wamugunda Gichira Njuki v Dancun Nyamu Muriuki [2015] eKLR, the court expressed itself as follows:

“The Applicant is the Administrator of the Estate of the deceased Plaintiff who died on 14th May, 2013 and obtained Letters of Administration on 25th July, 2014. He says he is desirous of prosecuting this suit which involves land. He says he was not able to obtain the said letters in time due to financial constraints. Order 24 Rule (3) of the Civil Procedure Rules allows the Court, “for good reason” to extend time within which to make a Legal Representative of a deceased Plaintiff a party to a suit that had abated. Similarly, under Order 24 Rule 7(2) of the Civil Procedure Rules, the Court may revive a suit where the Applicant shows that he was prevented “by any sufficient cause” from continuing the suit. (Emphasis mine)

Has the Applicant proved that there is “good reason” to extend time or that he was prevented by “sufficient cause” from continuing the suit? The applicable standard of proof is, of course, on a balance of probabilities. The Applicant only obtained the limited grant on 25th July, 2014 and obviously he could not make this application without the grant. As for the delay in obtaining the limited grant, he says it was due to financial constraints. I think that is a good enough reason. I am also of the view that the period between 14th May 2014 when the suit abated and 25th July, 2014 when he obtained the limited grant and thereafter filed this application on 10th November 2014, and bearing in mind his financial constraints, does not amount to un-reasonable delay. Lastly, the suit involves a claim to own land and it would be in the interest of justice to have the same resolved in Court more so bearing in mind the emotive nature of such disputes. There is nothing to suggest that the Defendant will suffer any prejudice and Order 50(5) of the Civil Procedure Rules gives the Court powers to extend the time set out by the Rules.”

84. In Said Sweilem Gheithan Saanum v Commissioner of Lands (being sued through Attorney General) & 5 others [2015] eKLR it was stated thus:

“There are three stages according to these provisions. As a general rule the death of a Plaintiff does not cause the suit to abate if the cause of action survives. But within one year of the death of the Plaintiff or within such time as the court may in its discretion for “good reason” determine, an application must be made for the Legal Representative of the deceased Plaintiff to be made a party. The “good reason” therefore relates to application for extension of time to join the Plaintiff’s Legal Representative to the suit.



Secondly, if no such application is made within one year or within the time extended by leave of the court, the suit shall abate. Where a suit abates no fresh suit can be brought on the same cause of action.

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. The effect of an abated suit is that it ceases to exist in the eye of the law. The abatement takes place on its own force by passage of time, a legal consequence which flows from the omission to take the necessary steps within one year to implead the Legal Representative of the deceased Plaintiff. There have been arguments, as to whether or not a formal order is necessary to confirm the fact of abatement. See *M’mboroki M’arangacha v Land Adjudication Officer, Nyambene and 2 others*, Meru H.C.C. Application No.45 of 1997 where the High Court held that an order to record the abatement of a suit was not necessary. See a similar holding in *KFC Union v Charles Murgor (Deceased) NBI HCCC No.1671 of 1994*. From the language of Order 24 Rule 3(2) aforesaid, earlier reproduced and highlighted, the fact of abatement has to be brought to the notice of the court, proved and accordingly recorded in order for the Defendant to apply for costs. It means that even though the legal effect of abatement may have already taken place, for convenience an order of the court is necessary for a final and effectual disposal of the suit. We borrow the statement of Lord Denning in *MacFoy v United Africa Co. Limited (1961) 3 All ER 1169*, that

“If an act is void, then it is in law a nullity. It is not only bad but incurably bad. There is no need for an order of the court to set it aside. It is automatically null and void without more ado. Though it is sometimes convenient to have the court declare it to be so....” It follows that the question of whether or not to extend time or grant an order for revival of an abate suit is essentially one of discretion.”
Emphasis is mine

85. This court has looked at the Applicant’s supplementary affidavit dated 14th April, 2023 and it is satisfied that the Applicant has proved that there is good reason to extend time and that she was prevented by sufficient cause. Particularly she says that her brothers were unaware that they needed to take out Letters of Administration Ad-litem which caused the delay in taking out the Letters of Administration and that it only came to their attention after the citation was filed in Court and this is the point at which it was agreed by that she should take out the Letters of Administration Ad Litem. She states that the obligation to administer her mother’s estate according to African tradition, was left for her brothers who were not aware that they needed to apply for Letters of Administration. This makes for a good explanation
86. The applicant deposes that she obtained the Letters of Administration Ad-litem on 19th December, 2022 after which she filed this Application on 15th February, 2023. I find that there is no delay and further that the reasons given for revival of the suit are sufficient.
87. I further consider that in view of the nature of relief sought in the suit, it is in the interest of justice that the suit be determined on the merits.



D. Who should bear the cost of this application?

88. In the judicial decision of Party of Independent Candidate of Kenya & another v Mutula Kilonzo & 2 others [2013] eKLR it was stated thus;

It is clear from the authorities that the fundamental principle underlying the award of costs is two-fold. In the first place the award of costs is a matter in which the trial Judge is given discretion.But this is a judicial discretion and must be exercised upon grounds on which a reasonable man could come to the conclusion arrived at. In the second place the general rule that costs should be awarded to the successful party, a rule which should not be departed from without the exercise of good grounds for doing so.” (Emphasis is mine)

Disposition.

89. The upshot of the foregoing is that the application dated 15th February, 2023 is allowed in the following terms:

- a. Time within which to apply for joinder of the Legal Representatives of the deceased Plaintiff is hereby enlarged.
- b. Esther Chepng'eno the Administrator of the Estate of Lucy Chepkemoi Mosonik-(Deceased), is hereby joined to this suit as a Plaintiff in substitution for the deceased Plaintiff.
- c. This suit is hereby revived.
- d. The Plaintiff shall file and serve an amended plaint, to reflect the substitution, within 14 days hereof.
- e. The cost of the application shall abide the outcome of the suit.

90. It is so ordered

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAKURU THIS 14TH DAY OF DECEMBER, 2023

L. A. OMOLLO

JUDGE

