



**Korir v Koech (Environment & Land Case 5 of 2014)  
[2023] KEELC 22184 (KLR) (7 December 2023) (Ruling)**

Neutral citation: [2023] KEELC 22184 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KERICHO  
ENVIRONMENT & LAND CASE 5 OF 2014  
MC OUNDO, J  
DECEMBER 7, 2023**

**BETWEEN**

**TAPSABEI SIGEI KORIR ..... PLAINTIFF**

**AND**

**JUDY CHEPKORIR KOECH ..... DEFENDANT**

**RULING**

1. Judgment in this matter was delivered on 6<sup>th</sup> April 2018 wherein the court found in favour of the Plaintiff and directed that the Defendant to vacate from land parcel No. Kericho/Silibwet /93 within three months and further that she removes the cautions registered against land parcels No. Kericho/Silibwet /93 and Kericho/Silibwet/1231.
2. Via an application dated 18<sup>th</sup> August 2022, brought pursuant to the provisions of rule 49 and 73 of the *Probate and Administration Rules*, including any other enabling provisions of the law, Counsel for the Plaintiff sought to substitute the original Plaintiff who passed away on 8<sup>th</sup> August 2020 with her legal representative one Joseph Cheruiyot Koech, so as to execute the orders of the court.
3. In response to the said application, the Respondent herein filed their Grounds of Opposition under order 51 rule 14(1)(c) of the *Civil Procedure Rules* seeking that the said application be dismissed with costs for offending the provisions of order 24 rule 3(2) of the *Civil Procedure Rules* for reason that the action did not survive the Plaintiff. That the Plaintiff being the registered proprietor of the suit properties and having passed away, the natural process of succession would commence. That the suit being a personal claim by the Plaintiff against the Defendant, the eviction could not be vested upon the Plaintiff's personal representative ad litem.
4. On 27 July 2023 the court gave directions that the Grounds of Opposition be disposed of in the first instance through written submissions which were to be filed within that timeframe of 14 days apart. On the 18<sup>th</sup> October 2023 parties had not complied with the court orders for which an extension of



14 days was granted and the matter scheduled for a further mention for 21<sup>st</sup> November 2020 on which day, only the Respondent had complied and a date was scheduled for ruling.

### **Respondent's submissions**

5. The Respondent framed the issues for determination as follows;
  - i. Whether the application is in compliance with order 24 rule 3(2) of the *Civil Procedure Rules*.
  - ii. Whether the cause of action herein survived the deceased Plaintiff.
  - iii. Whether Joseph Cheruiyot Koech should be made a party in this case in place of the deceased Plaintiff.
  - iv. Whether a personal representative ad litem of the estate of the deceased Plaintiff can pursue eviction of the Defendant.
  - v. Who should bear the costs of the application?
6. On the first issue for determination, the Respondent relied on the provisions of order 24 rule 3(1) of the *Civil Procedure Rules* to submit that the Plaintiff passed away on the 8<sup>th</sup> August 2020 wherein the Limited Grant of Letters of Administration had been obtained on 14<sup>th</sup> September 2021. That the current application had been filed on 21<sup>st</sup> September 2022, two years later without an extension of time and no sufficient reason for the delay had been advanced. That the Plaintiff's suit abated on 8<sup>th</sup> August 2021.
7. On the second issue for determination as to whether the cause of action survived the Plaintiff, it was the Respondent's submission that since the suit was instituted by the Plaintiff in her personal capacity as an absolute proprietor of land parcels No Kericho/Silibwet /93 and Kericho/Silibwet/1231 where she had sought eviction of the Defendant, judgment had been delivered to the effect that the Defendant's right to only accrue upon the demise of the Plaintiff. That fortunately for the Defendant, the Plaintiff had since passed on and her rights to claim over the suit property had now accrued. That the Plaintiff's absolute right over the suit property had therefore died with her.
8. On the issue as to whether the personal representative ad litem of the estate of the deceased Plaintiff could pursue eviction of the Defendant, the Respondent submitted in the negative, stating that such eviction could only be exercised by the deceased Plaintiff in her personal capacity. That only the succession court could determine the Defendant's claim over the suit parcels of land also this court no longer had jurisdiction to entertain the suit the same having died with the Plaintiff.
9. As to whether Joseph Cheruiyot Koech should be made a party in place of the deceased Plaintiff, it was the Respondent's submission that the suit had abated and pursuant to the provisions of order 24 rule 3(1) of the *Civil Procedure Rules*, the said Joseph Cheruiyot Koech had not sought for an extension of time as prescribed and therefore he did not merit to be made party to the suit. That further substitution of the deceased could not add any value to the suit which had rested with the Plaintiff deceased.
10. On the issue of costs, the Respondent relied on the provisions of section 27 of the *Civil Procedure Act* to submit that costs usually followed the event and since the application was frivolous, the costs should be borne by the Plaintiff.

### **Determination**

11. It is unfortunate that after the death of the Plaintiff, the Respondent's Counsel in a rather brave, rare and unorthodox manner submitted that 'fortunately for the Defendant, the Plaintiff had since passed



- on and her rights to claim over the suit property had now accrued.’ as if to rejoice over the death of the Plaintiff on behalf of his client. This phrase leaves a bitter taste in the mouth.
12. Be as it may, it is not in dispute Judgment in this matter was delivered on 6<sup>th</sup> April 2018 wherein the court found in favour of the Plaintiff and directed the Defendant to vacate from land parcel No Kericho/Silibwet /93 within three months and further that she removes the cautions registered against land parcels No Kericho/Silibwet /93 and Kericho/Silibwet/1231.
  13. It is further not in dispute that the Plaintiff subsequently passed away on the 8<sup>th</sup> August 2020 wherein Joseph Cheruiyot Koech obtained a Limited Grant of Letters of Administration on 14<sup>th</sup> September 2021 and filed an application dated 18<sup>th</sup> August 2022, seeking leave to substitute the said deceased Plaintiff so as to execute the Decree of the court on behalf of the deceased’s estate. The application was opposed by the Grounds of Opposition filed by the Respondent as herein above stated which grounds I have considered together with the submissions herein filed and the applicable law.
  14. Sections 82 and 83 of the Law of Succession Act are explicit on the powers and the duties of personal representatives respectively. Among the duties bestowed on them, as provided under section 82 is to enforce, by suit or otherwise, all causes of action which, by virtue of any law, survive the deceased or arising out of his death for his personal representative.
  15. Execution of judgments and/or decrees is governed by section 4(4) of the Limitations of Actions Act which provides as follows:

“ An action may not be brought upon a judgment after the end of twelve years from the date on which the judgment was delivered, or (where the judgment or a subsequent Order directs any payment of money or the delivery of any property to be made at a certain date or at recurring periods) the date of the default in making the payment or delivery in question, and no arrears of interest in respect of a judgment debt may be recovered after the expiration of six years from the date on which the interest became due”.
  16. In the case of M’ikiara M’rinkanya & Another v Gilbert Kabeere M’mbijiwe [2007] eKLR, the Court of Appeal held that;

“ The construction given to the corresponding Section 4 (4) of the Act by the courts in this country is much wider. All post judgment proceedings including originating proceedings and interlocutory proceedings for execution of judgment are statute barred after 12 years.”
  17. This finding in effect interpreted the word “action” to cover execution of judgments and that the time within which to execute a decree could not be extend after 12 years.
  18. In the present matter, pursuant to delivery of the judgment seeking that the Defendant herein vacates from land parcel No Kericho/Silibwet /93 and further that she removes the cautions registered against land parcels No Kericho/Silibwet /93 and Kericho/Silibwet/1231, there was no evidence that the decree of the court has been appealed from, varied or reviewed. Court orders and decrees are intended to be complied with and the Plaintiff’s administrator is only but seeking compliance with the court order or the decree of the court.
  19. As a general rule, upon the death of any of the party to a suit, the suit abates after 12 months from the death of the party. However an examination of order 24 rules 3, 4 and 7 of the Civil Procedure Rules suggests that such abatement does not apply to instances where the suit is at the execution stage.



Indeed there is an exception to the general rule provided for by order 24 rule 10 of the Civil Procedure Rules which provides that:

“Nothing in rules 3, 4 and 7 shall apply to proceedings in execution of a decree or order.”

20. It is clear from the provision of the law that the suit cannot abate at the execution stage where a party to the suit is deceased. Indeed after the decree holder died, the execution process stalled and that it is only when her personal representative was appointed that time started running, which was on 14<sup>th</sup> September 2021. As such, the 12 year period guaranteed by the provisions of section 4(4) of the Limitation of Actions Act for execution of a court Decree had not lapsed at the time the application for substitution of the deceased Plaintiff was presented before court, as the decree was not statute-barred and that the estate of the deceased Plaintiff cannot be barred from enjoying the fruits of the judgment.
21. I find the Grounds of Opposition dated 25<sup>th</sup> July 2023 and filed by the Defendant on an equal date, lacking merit and is thereby dismissed. To save on judicial time, the Plaintiff's application dated the 18<sup>th</sup> August 2022 is herein allowed with costs. Joseph Cheruiyot Koech be and is herein substituted as the legal representative of the deceased Plaintiff so as to execute the Decree of the court on behalf of the deceased's estate.

**DATED AND DELIVERED VIA MICROSOFT TEAMS AT KERICHO THIS 7<sup>TH</sup> DAY OF DECEMBER 2023.**

**M.C. OUNDO**

**ENVIRONMENT & LAND – JUDGE**

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