



REPUBLIC OF KENYA

IN THE ENVIRONMENT & LAND COURT AT NAIROBI

ELC CASE NO.1297 OF 2015

GEOFFREY GATIRIMA NG'ANG'A.....1ST PLAINTIFF

SOLOMON ITUU NGACHA.....2ND PLAINTIFF

LYDIAH NJERI WAWERU.....3RD PLAINTIFF

=VERSUS=

JOHN NGUGI KABOGO.....1ST DEFENDANT

JOHN PETER KAMAU RUHANGI.....2ND DEFENDANT

RULING

1. This is the Notice of Motion application dated 16th May 2018. It is brought by one Consolata Wangari Ituu under Section 1A, 1B and 3A of the Civil Procedure Act, Order 24 Rule 3 and Rule 7(2) of the Civil Procedure Rules.

2. The Applicant seeks orders: -

a) That this Honourable court be pleased to revive this suit which has abated.

b) That this Honourable court be pleased to extend the time which the Applicant needs to substitute the name of the Plaintiff.

c) That this Honourable court be pleased to substitute the name of the 2nd Plaintiff, Solomon Ituu Ngacha (now deceased) with that of the Applicant Consolata Wangari Ituu, in her capacity as the legal representative of the estate of Solomon Ituu Ngacha (deceased).

d) Costs of this application be provided for.

3. The grounds in support are on the face of the application and are set out in paragraphs 1 to 6. The application is also supported by the annexed affidavit of Consolata Wangari Ituu, sworn on 16th May 2018. She deponed that she is the legal representative of the estate of Solomon Ituu Ngacha (deceased) by virtue of Letters of Administration issued on 3rd November 2017. She added that the 2nd Plaintiff instituted the suit herein together with the 1st and 3rd Plaintiffs vide the plaint dated 16th December 2015.

4. She deponed that the subject matter of the suit and claim arising therefrom are the properties known as **L.R No.27/330** owned jointly by the 1st Plaintiff and the 2nd Plaintiff (now deceased) and the property known as **L.R No.27/328** owned by the 1st Plaintiff.

5. She deponed that the 2nd Plaintiff prosecuted this suit until his demise on 15th October 2016. She further deponed that there was delay in securing Letters of Administration occasioned by factors beyond her control, the time taken in consolidating the estate of the deceased as well as the court process and by the time she was granted Letters of Administration, the 2nd Plaintiff's suit against the Defendants had abated.

6. She also deponed that the delay in bringing the application has not been inordinate or intentional but is excusable as she is desirous of prosecuting this suit on behalf of the estate of the deceased and the issues arising in the suit deserve the court's consideration.

7. She deponed that no prejudice will occasion the Defendants if the application is allowed as they will also be granted the opportunity to defend the suit.

8. The application is opposed by the 2nd Defendant vide his replying affidavit sworn on 29th September 2021. He deponed that the application is time barred and the Applicant has not tendered any sufficient evidence to show that the deceased took any efforts to prosecute the matter. He further deponed that the reasons stated for delay in acquiring Letters of Administration ad litem are not convincing.

9. He deponed that the application is dated 16th May 2018 yet it was filed on 17th July 2019 which is a delay of a period of 1 year and 2 months and it was not explained. He asked the court to dismiss the application.

10. Parties relied on their respective affidavits and did not file any submissions.

11. I have considered the notice of motion and the affidavit in support. I have also considered the affidavit in response and the authorities cited. The issue for determination is whether the Applicant has demonstrated sufficient cause to warrant revival of the suit.

12. It is not in dispute that the 2nd Plaintiff died on 15th October 2016. The suit by the 2nd Plaintiff against the Defendants abated on 15th October 2017 by operation of law; Order 24 of the Civil Procedure Rules. Letters of Administration Intestate of the 2nd Plaintiff's estate were issued to Consolata Wangari Ituu on 3rd November 2017 a few days after the suit had abated.

13. While the application for revival of suit is dated 16th May 2018, it was filed on 17th June 2019; almost two (2) years after the Letters of Administration were issued and over two (2) years after the 2nd Plaintiff's death.

14. **Order 24 Rule 7(2)** gives the court discretionary power to revive a suit that has abated, provided that the Applicant demonstrates that he was prevented from making the application by "sufficient cause". The Applicant explained the delay in obtaining Letters of Administration. I do not find the explanation plausible.

15. While the letters of administration were issued slightly almost a month after the suit had abated, the period between issuance of the letters of administration and filing of this application is inordinately long. Further, the delay was not explained to this court. The court can only infer negligence and indolence on the part of the Applicant.

16. In **Rebecca Mijide Mungole & another v Kenya Power & Lighting Company Ltd & 2 others [2017] eKLR**, the court of Appeal made the following observation on the issue of abatement of suits; *"If the Applicant demonstrates and the court is satisfied that he was prevented by any sufficient cause from continuing with the suit, the court will allow the revival of the suit upon such terms as to costs or otherwise as the court may think fit. The operating phrase in rule 7(2) "sufficient cause" has been broadly and liberally defined, in order to advance substantial justice. Liberal construction should not be done with the result that one party is thereby prejudiced. When the delay is on account of any dilatory tactics, want of bona fides, deliberate inaction or negligence on the part of the applicant, the court will not revive the abated suit. If a party has been negligent or indifferent in pursuing his rights and remedies, it will be equally unfair to deprive the other party of a valuable right that has accrued to him in law. The explanation has to be reasonable and plausible, so as to persuade the Court to believe that the explanation rendered is not only true, but justifies exercising judicial discretion in favour of the applicant."*

17. In a persuasive decision of this court in **Charles Mugunda Gacheru v Attorney General & another [2015] eKLR**, the court found a delay of more than two (2) years in filing an application for revival of suit to be inordinate.

18. In conclusion, I find no merit in this application and the same is dismissed with costs to the 2nd defendant/Respondent.

It is so ordered.

DATED, SIGNED AND DELIVERED NAIROBI THIS 24TH DAY OF FEBRUARY 2022.

.....

L. KOMINGOI

JUDGE

In the presence of:-

Ms E. Kiuluku for the Plaintiff

Mr. Gichuki for the 1st Defendant

Mr. J. M. Njengo for the 2nd Defendant

Steve –Court Assistant