Wanyoike (Suing as Administrator Ad Litem of the Estate of Wanyoike Mung'ethu - Deceased) v Kiboria & 2 others (Environment & Land Case 98 of 2017) [2025] KEELC 3377 (KLR) (24 April 2025) (Ruling)

Neutral citation: [2025] KEELC 3377 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT THIKA

ENVIRONMENT & LAND CASE 98 OF 2017

JM ONYANGO, J

APRIL 24, 2025

BETWEEN

SAMMY NGIGI WANYOIKE (SUING AS ADMINISTRATOR AD LITEM OF THE ESTATE OF WANYOIKE MUNG'ETHU - DECEASED) ..... APPLICANT

AND

JANE MUTHONI KIBORIA ..... 1ST DEFENDANT

MILKA NJERI ..... 2ND DEFENDANT

LAND REGISTRAR, THIKA ..... 3RD DEFENDANT

RULING

1. The court has been moved vide a Notice of Motion application dated 14th November 2024 seeking to reinstate Thika ELC No. 98 of 2017 which abated upon the unfortunate demise of the Plaintiff, one Wanyoike Mung'ethu (deceased). This application, therefore, stands as a humble yet resolute plea: that the curtain which fell prematurely on this suit be lifted.

2. It is thus urged that the matter be revived, that its merits be tested, and that the solemn duty of this court, to decide not on the duration of a life but on the substance of a claim, be faithfully discharged.

3. The Application find's its anchor in the Affidavit of one Sammy Ngigi Wanyoike, sworn on even date. The Applicant explains that following the death of the Plaintiff, one Wanyoike Mung'ethu (deceased) it took the family a while before they got in touch with Counsel on record and acquainted themselves with the position of the case. Upon doing so, the Applicant avers that he obtained Letters of Administration Ad Litem issued on 14th December 2023 and thereafter filed the instant application.

3. It is the Applicant's firm position that no undue delay has marred the making of this application and that no prejudice shall befall the Respondents should the Court permit the revival of the cause. Rather, justice, he urges, would be the truest beneficiary.

4. This application, solemn though it may be, was met with a thunderous wall of resistance. The 1st and 2nd Respondents, each armed with a replying affidavit, did not merely oppose; they vehemently repelled the call to reopen the matter. The Respondents contended that the Applicant had failed to offer a satisfactory explanation for the inordinate delay of nearly one year between the abatement of the suit and the filing of the present application.

5. The Respondent's argued that the suit, once laid to rest by the Plaintiff's demise, ought not to be stirred from its procedural grave. To revive it now, they argued, would be to rattle the bones of settled litigation and breathe into it an afterlife not sanctioned by law.

6. The application was canvassed by way of written submissions, duly filed by the Applicant and the 1st Respondent.

Issues for Determination.

7. Having carefully considered the application, affidavits, submissions, and the applicable law, a singular issue emerges for determination:

   Whether the Applicant has demonstrated sufficient cause to warrant the reinstatement of the abated suit.

Analysis

8. The power to reinstate an abated suit is a discretionary one, to be exercised judiciously and upon demonstration of sufficient cause. It is not enough that a party seeks relief; the law demands an explanation anchored in diligence, reasonableness, and respect for procedural order. With that in mind, I must now consider whether the circumstances advanced by the Applicant meet this threshold.

9. The fact that Wanyoike Mung'ethu (deceased) passed away on 17th July 2022 is uncontroverted. Thereafter, both through effluxion of time and the operation of the law the suit abated on 24th October 2023.

10. Order 24 Rule 3 of the Civil Procedure Rules provides that:

> "
>
> "(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 subrule (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."

11. The rule thus draws a clear procedural boundary: if no action is taken within one year of the plaintiff's death, the suit does not merely lie dormant, it abates by force of law. Yet, that finality is not absolute; the Court may, upon sufficient cause, breathe life back into the matter through an extension of time.

12. Furthermore, Order 24 Rule 7(2) provides that:

> " 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."

13. Essentially, the rule operates as a remedial avenue, not as of right but upon showing of sufficient cause. It serves to balance procedural discipline with substantive justice, requiring the applicant to establish why the Court's indulgence ought to be granted. It is incumbent upon the Applicant to demonstrate sufficient cause to warrant a reinstatement of the suit.

14. In Hon. Attorney General v The Law Society of Kenya & Another, Civil Appeal No. 133 of 2011 [2013] eKLR, Musinga JA considered the meaning of the term "good and sufficient cause" and observed as follows:

> " Sufficient cause or good cause in law means:-'the burden placed on a litigant usually by a court rule or order) to show why a request should be granted or any action excused see Black's Law Dictionary 9th Edition page 251. Sufficient cause must therefore be rational, plausible, logical, convincing, reasonable and truthful. It should not be an explanation that leaves doubt in a judge's mind. The explanation should not leave unexplained gaps in the sequence of events."

15. This articulation sets a clear standard: an applicant seeking the court's indulgence must present a coherent and credible account, one that withstands scrutiny and leaves no material uncertainty as to the reasons for the delay.

16. Accordingly, the Court now turns to scrutinize whether the explanation presented by the Applicant unequivocally satisfies the rigorous standard of good and sufficient cause as delineated above.

17. As previously noted, it is the Applicant's position that family of the deceased was grieving and had not yet familiarized themselves with the details of the suit.

18. Learned counsel for the Applicant argues that considering the Applicant obtained the Limited Grant of Letters of Administration on 14th December 2023 and subsequently filed the application on 14th November 2024, any delay is demonstrably modest and fails to impose substantial prejudice upon the Respondents. He urged the court to be guided by the decision in Oyatsi v Wangui & another [2024] KEHC 876 (KLR) and Keith & 2 others (Sued in Their Capacity as Advocates Practising Under the Firm Name of Daly and Figgis Advocate) v Alibhai [2024] KECA 1196 (KLR). Learned counsel for the Applicant implored the court to consider the application through the prism of the overriding objectives of the *Civil Procedure Act* and disregard procedural technicalities.

19. In opposition to the application, learned counsel for the 1st Respondent argued that the Applicant has failed to provided sufficient reasons to justify the delay in seeking reinstatement. It was their position that the explanation offered lacked both coherence and credibility, falling short of the threshold required to invoke the Court's discretion.

20. In bolstering this argument, learned counsel placed reliance on the decisions in Mageka v Good News Mission Kenya [2024] KEELC 669 (KLR) and Nicholas Onyuna Aura v David Otieno Oduor [2021] KEELC 1449 (KLR)

21. Notwithstanding the Applicant's reliance on the natural process of familial grief as justification, the temporal facts speak with a harsher clarity. The suit was revived more than two years following the Plaintiff's demise and nearly a year after the Grant Ad Litem was issued.

22. The Applicant's contention that the family's initial shock and bereavement precluded timely action offers but a slim solace, particularly when one considers that the 2nd Respondent, a daughter to the deceased and brother to the Applicant, was fully apprised of the litigation's progress. Such proximity to the matter renders the excuse of ignorance or unpreparedness less persuasive.

23. It is, of course, well acknowledged that under Article 159(2)(d) of *the Constitution*, this Court is expected to administer justice without undue regard to procedural technicalities. Yet, that directive does not exist in isolation. Article 159(2)(b) equally affirms that justice shall not be delayed. *The Constitution* thus strikes a deliberate balance; eschewing rigid formalism on the one hand, while on the other hand cautioning against inertia that frustrates the timely resolution of disputes.

24. In Rebecca Mijide Mungole & another v Kenya Power & Lighting Company Ltd & 2 others [2017] KECA 544 (KLR) the Court of Appeal addressed the concept of revival of a suit after it has abated in the following terms:

> "A prayer for the revival of the suit cannot be allowed as a matter course or right. If the applicant demonstrates and the court is satisfied that he was prevented by any sufficient cause from continuing 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."

25. In the present matter, the Applicant has attributed the delay primarily to the family's period of mourning and lack of familiarity with the status of the case. However, this justification, standing alone, does not rise to the threshold contemplated by Rule 7(2).

26. The fact that the Applicant waited nearly a year after obtaining the Grant Ad Litem to file the present application, coupled with the reality that the 2nd Respondent, herself a close relative, was aware of the suit, suggests a level of inaction that leans closer to indifference than to inadvertence. To allow revival in such circumstances would not be to advance substantial justice, but rather to unsettle the procedural finality rightly earned by the Respondents through the effluxion of time.

Determination.

27. Corollary to the foregoing, I find that the Applicant's protracted inaction, compounded by the knowledge and availability of a close relative intimately aware of the proceedings, renders the

Applicant's submission insufficient to meet the threshold of "sufficient cause." Consequently, the application dated 14th November 2024 is hereby dismissed.

28. Considering the nature of the application, each party shall bear its own cost.

It is so ordered

DATED, SIGNED AND DELIVERED, AT THIKA THIS 24TH DAY OF APRIL 2025

J. M ONYANGO

JUDGE