



**Nzioka (Suing as the Administrator of the Estate of Paul Nzioka Ndoté (Deceased)) v Thige & 3 others; Mwangi (Applicant) (Environment and Land Case Civil Suit 974 of 2013) [2025] KEELC 3262 (KLR) (8 April 2025) (Ruling)**

Neutral citation: [2025] KEELC 3262 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT AND LAND CASE CIVIL SUIT 974 OF 2013**

**TW MURIGI, J**

**APRIL 8, 2025**

**BETWEEN**

**ESTHER NDUKU NZIOKA ..... PLAINTIFF  
SUING AS THE ADMINISTRATOR OF THE ESTATE OF PAUL NZIOKA  
NDOTE (DECEASED)**

**AND**

**PAUL RONALD NDEGWA THIGE ..... 1<sup>ST</sup> DEFENDANT  
DRUMVILLE FARMERS COOPERATIVE SOCIETY LIMITED .... 2<sup>ND</sup>  
DEFENDANT  
THE REGISTRAR OF LAND ..... 3<sup>RD</sup> DEFENDANT  
THE HONOURABLE ATTORNEY GENERAL ..... 4<sup>TH</sup> DEFENDANT**

**AND**

**ELIZABETH NZISA MWANGI ..... APPLICANT**

**RULING**

1. By an amended Notice of Motion dated 20<sup>th</sup> June, 2024, the Applicant herein seeks the following orders:-
  - a. That the Honourable Court be pleased to review, vary and/or set aside the orders made on 30<sup>th</sup> October, 2017 dismissing the suit filed herein together with all other consequential orders.
  - b. That the suit which has abated be revived and that the Honourable court be pleased to reinstate, hear and determine the Plaintiff's case.



- c. That I be granted leave to substitute the deceased Plaintiff (Esther Nduku Nzioki).
  - d. That the costs of the application be in the cause.
2. The application is premised on grounds appearing on its face together with the Supporting Affidavit of Elizabeth Nzisa Mwangi sworn on even date.

### **The Applicant's Case**

3. The Applicant deposed that she is the Administrator of the Estate of Esther Nduku Nzioki (deceased) having been issued with Letters of Administration in the year 2016.
4. She further deposed that on 30<sup>th</sup> October, 2017, Hon. Justice Elijah Obaga dismissed this suit on the grounds that there was no movement in the case. The Applicant claims that the advocate previously on record for the deceased Plaintiff did not inform her on the need to do substitution. She further claimed that the said Advocate denied her access to the file and added that the secretary handed it over to her in the year 2023 after she threatened to take action. She explained that she followed up with the registry and was informed that the court file was missing.
5. The upon learning of the e-filing system, she applied to be enjoined in the suit and it is then that she discovered that the case had been dismissed.
6. She further averred that the grant was confirmed on 22<sup>nd</sup> May, 2024 and added that the delay was occasioned by the loss of Succession File No.68 of 2015 which though filed in Machakos was transferred to Kangundo Law Courts without her knowledge and had been dismissed for want of prosecution.
7. In conclusion the Applicant asserted that she will be prejudiced if the suit is not reinstated for hearing and determination.

### **The 1<sup>st</sup> Respondent's Case**

8. The 1<sup>st</sup> Respondent filed a Replying Affidavit dated 6<sup>th</sup> August, 2024 in opposition to the application. He contended that the current application has been filed after an inordinate delay of 10 years which has not been explained. He relied on the maxim that equity aids the vigilant and not the indolent.
9. He deposed that the Applicant has not adduced any evidence to collaborate her allegation that the suit file was missing from the registry or that she made any effort to reach out to the advocate representing the deceased Plaintiff. He further deposed that the said advocate was on record until the suit was dismissed.
10. He contended that the Applicant has not produced any application to have the grant rectified to include the property that she alleges belongs to the estate of the deceased Plaintiff. He asserted that litigation must come to an end as courts have a time shelf within which rulings and Judgments should be settled.
11. Though duly served, the 2<sup>nd</sup> - 4<sup>th</sup> Defendants did not file any response to the application.
12. The application was canvassed by way of written submissions.

### **The Plaintiff's Submissions**

13. The Applicant filed her submissions dated 2<sup>nd</sup> December, 2024 and outlined the following issues for the court's determination:-



- a. Whether the orders made on 30<sup>th</sup> October 2017 dismissing the suit filed herein together with all other consequential orders should be set aside?
  - b. Whether the abated suit should be revived and set down for hearing and determination?
  - c. Whether the Plaintiff should be granted leave to substitute the deceased Plaintiff?
  - d. Whether the costs of the application should be in the cause.
14. On the first issue, the Plaintiff submitted that under Order 12 Rule 7 of the Civil Procedure Rules, the court has discretion to set aside the dismissal orders and reinstate the suit for hearing and determination. She further submitted that failure to attend court was not deliberate but was occasioned by the mistake of the previous Advocate who failed to inform her of the need to apply for substitution.
  15. The Plaintiff contended that the mistakes of an advocate should not be visited against his client. She further contended that she will be condemned unheard if the suit is not reinstated for hearing. In this regard, the Plaintiff cited the case of Tana and Athi Rivers Development Authority –vs- Jeremiah Kimigho Mwakio & 3 Others [2015] eKLR.
  16. On the second issue, the Plaintiff submitted that she was not informed of the case or the need to substitute the deceased Plaintiff by the previous advocate. She reiterated the contents of her affidavit in support of the application to submit that she was not to blame for failure to substitute the deceased Plaintiff. She submitted that Article 50 coupled with Article 159 of *the Constitution* frowns upon procedural technicalities in favour of substantive justice. To buttress this point, the Plaintiff relied on the following authorities:-
    - a. Issa Masudi Mwabumba -vs- Alice Kavenya Mutunga & 4 others [2012] eKLR
    - b. Wachira Karani –vs- Bildad Wachira [2016] eKLR
    - c. John Nahashon Mwangi –vs- Kenya Finance Bank Limited (in Liquidation) [ 2015] eKLR .
  17. The Plaintiff also relied on the case of Joseph Kinyua –vs- Go Ombachi [2019]eKLR to submit that the right to be head is a constitutional right under Articles 48 and 50 of *the Constitution*. She asserted that she has demonstrated that she was prevented by sufficient cause from continuing with the suit.
  18. On the third issue, the Plaintiff submitted that she is the Legal Administrator of the Estate of Esther Nduku Nzioki and as such, she has met the threshold to substitute the deceased Plaintiff.
  19. On the issue of costs, the Plaintiff urged the Court to exercise its discretion to reinstate the suit for hearing and determination.

### **The 1<sup>st</sup> Defendant's Submissions**

20. The 1<sup>st</sup> Defendant filed his submissions dated 16<sup>th</sup> December, 2024. On his behalf, Counsel outlined the following issues for the court's determination:-
  - a. Whether the court has jurisdiction to revive an abated suit and substitute the deceased with the Applicant?
  - b. Whether there has been inordinate delay in applying for substitution?
  - c. Whether the 1<sup>st</sup> Defendant will suffer an injustice if the application is allowed?
21. On the first issue, Counsel submitted that the Plaintiff has not demonstrated sufficient cause for not filing the present application on time. To buttress this point, Counsel relied on the case of Charles



Mugunda Gacheru –vs- Attorney General & Another [2015] eKLR and on the case of Rukwaro Waweru –vs- Kinyutho Ritho & Another [2015] eKLR.

22. On the second issue, Counsel relied on Order 24 Rule 3 of the Civil Procedure Rules to submit that an application for substitution must be made within one year. Counsel submitted that there was inordinate delay of 10 years in bringing the present application as the suit abated on or about 3<sup>rd</sup> November, 2015. To buttress this point, Counsel relied on the following authorities:-
- a. Cecilia Wanja Waweru –vs- Jackson Wainaina Muiruri & another [2014] eKLR
  - b. Nyoro Construction Co. Limited –vs- Gichiri (Environment and Land Appeal E021 of 2023 ) [2023] KEELC 22150 (KLR) (7 December 2023)(Ruling).
  - c. Sweilem Gheithan Saanum –vs- Commissioner of Lands (Being sued Through Attorney General ) & 5 Others [2015] eKLR.
23. On the third issue, Counsel submitted that the application is likely to affect many other people who may have moved on after the suit abated. It was submitted that after the death of the Plaintiff, her advocates on record continued attending court and seeking for adjournment on the grounds that they had not received instructions from the deceased’s family to effect substitution and therefore it is not true that the said Advocate abandoned the Applicant.
24. Counsel contended that if the application is allowed, it is likely to affect many other people who may have moved on after the suit bated. It was further contended that Article 159 (2) (b) of *the Constitution* contemplates that justice shall not be delayed. In conclusion, Counsel urged the court to dismiss the application with costs.

### **Analysis And Determination**

25. Having considered the application, the respective affidavits and the rival submissions, the only issue that arises for determination is whether the Applicant is entitled to the orders sought.
26. The Applicant is seeking to have the dismissal orders set aside and to revive the abated suit.
27. The record shows that on 30<sup>th</sup> October, 2017 the court directed that the application dated 10<sup>th</sup> March, 2017 would be heard on 22<sup>nd</sup> November, 2017. The suit was therefore not dismissed pursuant to the said orders; it is the orders of 22<sup>nd</sup> November, 2017 that dismissed this suit for want of prosecution.
28. It is not in dispute that the suit herein has abated. The Applicant is seeking to set aside the dismissal orders and to revive the abated suit.
29. Order 24, Rule 3 of the Civil Procedure Rules provides as follows:-

Procedure in case of death of one of several plaintiffs’ or of sole plaintiff.

- 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.

30. Order 24, Rule 7 of the Civil Procedure Rules provides that:-

- 1) Where a suit abates or is dismissed under this Order, no fresh suit shall be brought on the same cause of action.
- 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.

31. The court is called upon to determine whether the Applicant has demonstrated sufficient cause to warrant the grant of the orders sought.

32. Sufficient cause was defined in Honorable Attorney General –vs- the Law Society of Kenya & Another Civil Application No.133 of 2011 cited in Kishor Kumar Dhanji Varsani –vs- Amolak Singh & 4 others [2016] eKLR as follows;

“Sufficient cause or good cause in law means: the burden placed on a litigant usually by court, rule or order to show why a request should be granted or an action excused. (See Black’s Law Dictionary, 9th Edition page 521), sufficient cause must be rational, plausible, logical, convincing, reasonable and truthful. It should not therefore be an explanation that leaves doubt in the Judges mind. The explanation should not leave unexplained gaps in the sequence of events.”

33. In Rebecca Mijide Mungole & Another –vs- Kenya Power & Lighting Company Ltd & 2 Others [2017] eKLR, the court of Appeal held that:-

“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.”

33. In the matter at hand, the Applicant contended that failure to substitute the deceased Plaintiff was occasioned by the Advocate for the deceased who failed to inform her that the suit had been dismissed and the need to substitute the deceased Plaintiff. She further contended that the suit file was missing from the Registry.



33. The court notes that the Applicant was issued with letters of administration of the estate of the deceased Plaintiff in the year 2016, way before this suit was dismissed on 22<sup>nd</sup> November 2017.
33. There is no evidence that the Applicant was not aware of this suit. Had she been proactive, she would have been substituted before the orders of 22<sup>nd</sup> November 2017 were issued.
33. There is no correspondence evidence indicating that the Applicant approached the registry/the deceased Plaintiff's advocates in the matter as alleged. The only correspondence on record is the Applicant's letter dated 29<sup>th</sup> May 2024 requesting for orders issued herein to enable her execute administration of the estate of the deceased Plaintiff.
33. For more than 7 years after the suit was dismissed, the Applicant did not take any step to continue with the suit. The reasons for inaction do not in my view constitute to sufficient cause contemplated under Order 24 Rule 7 of the Civil Procedure Rules. In my view, allowing the application would not further the overriding objective which contemplates speedy resolution of cases.
33. In this regard, I am persuaded by the decision in the case of Kiprotich Korir & Another –vs- Shiyotor Holdings Limited [2021] eKLR where the Court held that:-
- “It is time that litigants were alive to the reality of the overriding objectives of Section 1A of the *Civil Procedure Act* which in part, requires the expeditious resolution of cases. Parking a case in court for 5 years without any good reason cannot be said to be in execution of the overriding objective.....”
33. In the end, I find that the Applicant has not demonstrated sufficient cause to warrant revival of the suit.
33. The upshot of the foregoing is that the application dated 20<sup>th</sup> June, 2024 is devoid of merit and the same is hereby dismissed. Each party to bear its own costs.

**RULING READ, DATED AND SIGNED VIA MICROSOFT TEAMS THIS 8<sup>TH</sup> DAY OF APRIL , 2025.**

**T. MURIGI**

**JUDGE**

In The Precence Of

The Applicant in person

Hilda – Court Assistant

