



REPUBLIC OF KENYA



**KENYA LAW**  
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**Kamau & 4 others v Karima (Environment and Land Case Civil Suit  
2952 of 1997) [2022] KEELC 3105 (KLR) (22 June 2022) (Ruling)**

Neutral citation: [2022] KEELC 3105 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT AND LAND CASE CIVIL SUIT 2952 OF 1997**

**SO OKONG'O, J**

**JUNE 22, 2022**

**BETWEEN**

**TABITHA GATHONI KAMAU & 4 OTHERS ..... PLAINTIFF**

**AND**

**PETER NJOROGE KARIMA ..... DEFENDANT**

**RULING**

1. What is before the court is the Plaintiffs' Notice of Motion application dated 29<sup>th</sup> April 2021. The Plaintiffs (hereinafter referred to as "the Applicants") have sought the following orders;
  1. The court be pleased to revive this suit.
  2. The court be pleased to substitute the deceased Defendant with one, Esther Njeri Njoroge.
  3. Directions be given accordingly.
  4. The costs of the application be in the cause.
2. The application which is supported by an affidavit sworn by one of the Applicants, Tabitha Gathoni Kamau on 29<sup>th</sup> April 2021 is brought on several grounds. The Applicants have averred that this suit was marked as having abated on 13<sup>th</sup> March 2019 as a result of a delay in the substitution of the Defendant who died on 10<sup>th</sup> August 2017. The Applicants have averred that the advocates for the deceased Defendant made no effort to substitute the deceased. The Applicants have averred that they are not to blame for the abatement of the suit. The Applicants have averred that a petition for grant of letters of administration was filed in the High Court at Kiambu 4 years after the death of the Defendant namely, Kiambu High Court Succession Cause No. 76 of 2020 (the High Court Succession Cause). The Applicants have averred that they discovered that the Defendant's wife who is sought to be substituted as Defendant in place of the deceased was cultivating the suit property, L.R No. Gatamaiyu/ Kagwe/1227(the suit property). The Applicants have averred that the deceased



Defendant's said wife has claimed to be the beneficial owner of the suit property necessitating her joinder to the suit as a party in place of the deceased.

3. The Applicants have averred that the substitution of the deceased by his said wife is necessary to ensure that the suit is not defeated by the Defendant's beneficiaries' wilful neglect or refusal to take out letters of administration. In her affidavit, Tabitha Gathoni Kamau has averred that efforts to have the deceased Defendant substituted within 1 year of his death were frustrated by the refusal of the Defendant's family and dependants to take out grant of letters of administration. She has averred that due to the refusal by the family and beneficiaries of the estate of the deceased Defendant to substitute him in this suit, she filed a Citation against the deceased's wife Esther Njeri Njoroge which citation the said wife of the deceased did not respond to. She stated that she thereafter filed a suit in the Magistrate's Court at Githunguri against the said Esther Njeri Njoroge to stop her from interfering with the suit property. She has stated that in the said proceedings at Githunguri, the said Esther Njeri Njoroge claimed that she had an interest in the suit property and that she had knowledge of how it was acquired by the deceased Defendant making her a suitable substitute for the Defendant in this suit. She has stated that she filed an application in the succession proceedings before the High Court in Kiambu objecting to the issuance of a grant of letters of administration to Hannah Njeri Njoroge and Esther Njeri Njoroge in respect of the estate of the deceased Defendant until the suit property is expunged from the list of assets of the deceased.
4. The application is opposed by Esther Njeri Njoroge (hereinafter referred to only as "the Respondent") through an affidavit sworn on 10<sup>th</sup> June 2021. The Respondent has averred that she is not a legal representative of the estate of the deceased Defendant as no grant of letters of administration has been issued to her in respect of the deceased's estate following an objection that has been lodged by the Applicants in the High Court Succession Cause. The Respondent has contended that she has no legal capacity to be substituted as a Defendant in place of the deceased. The Respondent has contended further that no basis has been laid to warrant the revival of the suit herein as the Applicants have already instituted a new suit in the lower court.

#### **The submissions:**

5. The application was argued on 3<sup>rd</sup> February 2022 when Mr. Nduati appeared for the Applicants while Mr. Kingara appeared for the Respondent. In his submission, Mr. Nduati relied wholly on the affidavit filed by the Applicants in support of the application and urged the court to allow the same.
6. On his part, Mr. Kingara similarly relied on the Respondent's affidavit in opposition to the application. He reiterated that the Respondent was not an administrator of the estate of the deceased and as such could not be substituted as a Defendant in the suit. In a rejoinder, Mr. Nduati submitted that the Applicants had demonstrated that the Respondent had already applied for a grant of letters of administration in respect of the estate of the deceased.

#### **Determination:**

7. Order 24 rule 4 of the Civil Procedure Rules provides as follows:

4 (1) Where one of two or more defendants dies and the cause of action does not survive or continue against the surviving defendant or defendants alone, or a sole defendant or sole surviving defendant 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 defendant to be made a party and shall proceed with the suit.



(2) Any person so made a party may make any defence appropriate to his character as legal representative of the deceased defendant.

(3) Where within one year no application is made under subrule (1), the suit shall abate as against the deceased defendant.”

8. Order 24 rule 7(2) of the [Civil Procedure Rules](#) on the other hand 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.”

9. Order 50 rule 6 of the Civil Procedure Rules provides that:

Where a limited time has been fixed for doing any act or taking any proceedings under these Rules, or by summary notice or by order of the court, the court shall have power to enlarge such time upon such terms (if any) as the justice of the case may require, and such enlargement may be ordered although the application for the same is not made until after the expiration of the time appointed or allowed:

10. Provided that the costs of any application to extend such time and of any order made thereon shall be borne by the parties making such application, unless the court orders otherwise.”

11. It is not disputed that the deceased Defendant died on 16<sup>th</sup> October 2017 and that he was not substituted within 1 year as a result of which the Applicants’ suit against him abated. It is also not in dispute that the court has discretionary power to revive an abated suit and to extend time within which a deceased party to a suit is to be substituted. What is in dispute is whether the Respondent has the legal capacity to be substituted as a Defendant in this suit in place of the deceased and whether the Applicants have shown sufficient cause to warrant the grant of the orders sought.

Sufficient cause was defined in [Attorney General v Law Society of Kenya & another](#)[2017]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 251.

Sufficient cause must therefore be rational, plausible, logical, convincing, reasonable and truthful. It should not be an explanation that leaves doubts in a judge’s mind. The explanation should not leave unexplained gaps in the sequence of events.”

12. I am satisfied that the Applicants have established sufficient grounds to warrant the revival of this suit and the substitution of the deceased Defendant. The Applicants have however failed to satisfy the court that the person sought to be substituted in place of the deceased Defendant after the suit is revived is a competent party. The Applicants have demonstrated that the beneficiaries of the estate of the deceased took no steps to apply for grant of letters of administration in respect of the estate of the deceased until after the expiry of 3 years from the date of the death of the deceased by which time the suit had abated. The Applicants have also demonstrated that they took steps to find out the administrators of the estate of the deceased so that they could have them substituted as Defendants in this suit in place of the deceased. The filing of the Citation is evidence that the Applicants were keen on prosecuting the suit.



13. On whether the Respondent has capacity to be substituted as a Defendant in this suit in place of the deceased Defendant, it is common ground that only a legal representative of a deceased defendant can be made a party to a suit in place of a deceased defendant. It is also common ground that the Respondent is not a legal representative of the estate of the deceased Defendant. The Respondent and one, Hannah Njeri Njoroge have filed a petition for grant of letters of administration in respect of the estate of the deceased in the High Court at Kiambu but the grant has not been issued to them. In fact, one of the Applicants, Tabitha Gathoni Kamau has objected to the issuance of a grant to them. Since the Respondent is not a legal representative of the deceased Defendant, I am in agreement with the Respondent that she has no capacity to be substituted as a Defendant in this suit in place of the deceased. Since there is no legal representative of the Defendant against whom the suit can proceed, it will serve no purpose to revive the suit.
14. The upshot of the foregoing is that I find no merit in the Applicants' application dated 29<sup>th</sup> April 2021. The application is dismissed with costs to the Respondent.

**DELIVERED AND DATED AT NAIROBI THIS 22<sup>ND</sup> DAY OF JUNE 2022**

**S. OKONG'O**

**JUDGE**

Ruling delivered virtually through Microsoft Teams Video Conferencing Platform in the presence of:

Mr. Maranga h/b for Mr. Nduati for the Plaintiffs

Mr. Kingara for the Respondent

Ms. C. Nyokabi-Court Assistant

