



**Fumo v Farah & another (Environment & Land Case
128 of 2018) [2022] KEELC 3850 (KLR) (26 July 2022) (Ruling)**

Neutral citation: [2022] KEELC 3850 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT & LAND CASE 128 OF 2018
NA MATHEKA, J
JULY 26, 2022**

BETWEEN

MOHAMED SWALEH FUMO PLAINTIFF

AND

BAKARI FARAH 1ST DEFENDANT

FATUMA FARAH 2ND DEFENDANT

RULING

1. The application is dated May 9, 2022 and is brought under order 8 rule 3 and order 51 rule 1 of the [Civil Procedure Rules](#), section 3A of the [Civil Procedure Act](#) seeking the following orders;
 1. That the plaintiff herein be granted leave to amend the plaint dated May 29, 2018 as per the draft amended plaint annexed hereto.
 2. That costs be in the cause.
2. It is based on the grounds that the plaintiff / applicant is desirous of amending the plaint dated May 29, 2018 for reasons that the 1st defendant is deceased. That the 1st defendant / respondent died on November 18, 2018 and it is now over 2 years since his death hence the suit against him has abated. That the amendment sought to be done is to strike off his name from the plaint and all other pleadings and proceed with the suit with the 2nd defendant only. That it is imperative for the determination of justice that the pleading be amended as the suit against him has abated to bring out all the issues before the court for a just and conclusive determination.
3. This court has considered the application and the submissions therein the application was not opposed. It is based on the grounds that the 1st defendant / respondent died on November 18, 2018 and it is now over 2 years since his death hence the suit against him has abated. That the amendment sought to be done is to strike off his name from the plaint and all other pleadings and proceed with the suit with



the 2nd defendant. The applicants have attached the 1st defendant's death certificate to prove the same. I find that the application is merited and i grant the same as prayed.

It is so ordered.

DELIVERED, DATED AND SIGNED AT MOMBASA THIS 26TH DAY OF JULY 2022.

N.A. MATHEKA

JUDGE

