



**Naikuni v Naikuni & 7 others; Manyuele (Applicant) (Environment & Land Case 9 of 2023) [2025] KEELC 3064 (KLR) (3 April 2025) (Ruling)**

Neutral citation: [2025] KEELC 3064 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAROK  
ENVIRONMENT & LAND CASE 9 OF 2023  
LN GACHERU, J  
APRIL 3, 2025**

**BETWEEN**

**FRANCIS SALATON NAIKUNI ..... PLAINTIFF**

**AND**

**SWAKEI OLE NAIKUNI ..... 1<sup>ST</sup> DEFENDANT**

**SARUNI OLE MWANYUEL ..... 2<sup>ND</sup> DEFENDANT**

**ELIJAH KARIUKI MOOTIAN ..... 3<sup>RD</sup> DEFENDANT**

**KANTET OLE SANKOK ..... 4<sup>TH</sup> DEFENDANT**

**SEENKA OLE MANYUELE ..... 5<sup>TH</sup> DEFENDANT**

**DISTRICT LAND REGISTRAR/ NAROK NORTH/SOUTH SUB-COUNTY ..... 6<sup>TH</sup> DEFENDANT**

**DISTRICT LAND SURVEYOR NAROK NORTH/SOUTH SUB-COUNTY ..... 7<sup>TH</sup> DEFENDANT**

**THE HON. ATTORNEY GENERAL ..... 8<sup>TH</sup> DEFENDANT**

**AND**

**MAXWELL PATTINA MANYUELE ..... APPLICANT**

**RULING**

1. The Matter for determination is the Notice of Motion Application dated 7<sup>th</sup> October 2024, brought under various provisions of law, wherein the Applicant herein Maxwell Patita Manyuele (being the Legal Representative of the Estate of the late Seenka Ole Manyuele), wherein the Applicant has sought for the following orders;-



- i. That the suit against the 5<sup>th</sup> Defendant herein be struck out for having been filed against a deceased person.
  - ii. That costs of the Application be in the cause.
2. This Application is supported by the grounds set out on the face of the Application, and on the supporting Affidavit of Maxwell Pitita Manyuele, the Applicant herein. Among the grounds in support are that; the 5<sup>th</sup> Defendant Seenka Ole Manyuele, died on 4<sup>th</sup> January 2020; this suit was filed on 9<sup>th</sup> November 2023, which was after the demise of the 5<sup>th</sup> Defendant, and therefore the suit is null and void ab initio; Further, no citation was ever issued against the estate of the 5<sup>th</sup> Defendant to take out Letters of administration by the Plaintiff; the Applicant herein has obtained temporary Letters of Administration Ad Litem in order to bring to the attention of this court about the demise of the 5<sup>th</sup> Defendant; Therefore, the suit against the 5<sup>th</sup> Defendant is incompetent, and is an abuse of the process of the court, and the same ought to be struck out; For the interest of justice this application should be allowed.
3. In his Supporting Affidavit, the Applicant Maxwell Patita Manyuele reiterated the contents of his grounds in support of the Application, and further averred that he has been advised by his advocate on record that the suit against the 5<sup>th</sup> Defendant is null and void since the 5<sup>th</sup> Defendant died before the suit was filed, and thus a dead person cannot be sued.
4. He further averred that as the son of the deceased, he took out Letters of Administration Ad Litem to bring to the attention of this court that the 5<sup>th</sup> Defendant is deceased. Further, that prior to the filing of the present suit, no grant of Letters of Administration of the estate of the late Seenka Ole Manyuele, had been issued and the Plaintiff did not cite the estate to take out Letters of Administration.
5. Therefore, the Applicant sought for the suit against the 5<sup>th</sup> Defendant to be struck out for being incompetent and a nullity.
6. The Application is opposed by the Plaintiff/ Respondent Francis Salaton Naikuni, who urged the court to dismiss the instant Application with costs, and allow the 5<sup>th</sup> Defendant now deceased to be substituted by the Applicant herein.
7. In his Replying Affidavit, the Plaintiff/ Respondent averred that when his father passed on, he was young, and his family was displaced by the 1<sup>st</sup> Defendant, and that together with his mother, they reside in Nairobi for gain. He also averred that he obtained the name of the 5<sup>th</sup> Defendant from the search that he carried over the original suit land from the Lands office.
8. He further averred that from the search, he was able to establish that the 5<sup>th</sup> Defendant was the beneficiary of one of the sub divisions which was obtained through fraudulent and irregular subdivision and transfer of his father's parcel of land. He claimed that he was not aware that the said Seenka Ole Manyuele was deceased, and who is registered as the owner of Cis Mara/ Kamurar/ 381, until when he was served with an Application dated 5<sup>th</sup> August 2024, wherein the Applicant had sought for Letters of Administration Ad Litem for the estate of Seenka Ole Manyuele for the purpose of these proceedings.
9. It was his contention that he has been informed by his advocate on record that the court has power and discretion to make determination on joinder or non-joinder of parties and issue appropriate directions.
10. Further, it was his contention that since the Applicant holds limited Letters of Administration over the estate of Seenka Ole Manyuele, the 5<sup>th</sup> Defendant(deceased), then he should be joined in this suit as a necessary party. Further, that in event the Applicant's application is allowed, then the Plaintiff/



Respondent should be allowed to substitute the 5<sup>th</sup> Defendant(deceased) with the Applicant herein as per the terms of the Limited Letters of Administration Ad Litem.

11. He also contended that he has been informed by his Advocate on record that instead of having the suit struck out, it would be in the interest of justice to have the Applicant joined as a Defendant herein instead of the 5<sup>th</sup> Defendant(deceased). He contended that the application herein lacks merit, and for the interest of justice, the court should decline it, and directs that the 5<sup>th</sup> Defendant (deceased) be substituted with the Applicant herein to save on the precious judicial time.
12. Further, he averred that the issue raised by the Applicant is a mere technicality, that does not go to the substance of the suit between the parties, and he urged the court to allow his request, as the orders sought are discretionary and for the interest of justice, the same should be disallowed, and 5<sup>th</sup> Defendant (deceased) substituted accordingly.
13. The Application was canvassed by way of written submissions. The Applicant filed his submissions through Cheruto & Co Advocates, wherein he submitted on two issues being;
  - i. whether the suit against the 5<sup>th</sup> Defendant should be struck out with costs;
  - ii. whether the 5<sup>th</sup> Defendant can be substituted.
14. On whether the suit against the 5<sup>th</sup> Defendant should be struck out, the Applicant submitted that according to the Death Certificate of the 5<sup>th</sup> Defendant, he died on 4<sup>th</sup> January 2020, whereas the suit herein was filed on 9<sup>th</sup> November 2023, long after the 5<sup>th</sup> Defendant's death. Therefore, the suit was filed against a dead person, which is against the law.
15. Reliance was placed in the case of C. Muttu vs Bharath Match Works Air 1964 Kant 293, where the court observed;

“if he defendant dies before the suit and a suit is brought against him in the name in which he carried on business, the suit is against a dead man from its inception. The suit being a nullity, the writ of summons issued in the suit by whomsoever accepted is also a nullity”
16. The Applicant also relied in the decision of the Court of Appeal in Geeta Bharat Shah & 4 Others vs Omar Said Mwatayari & Another (2009) eKLR, where the court stated that no court has jurisdiction to hear a suit filed against a person who was already dead by the time the suit was filed.
17. Therefore, the Applicant submitted that a dead person cannot be sued, and that a case against a deceased person is a nullity. Since the 5<sup>th</sup> Defendant was sued after his demise, then the suit against him is a nullity, and should be struck out. Reliance was placed in the following cases; SCOK Petition No. 5 of 2015; Rvs Karisa Chengo & 2 Others; Benjamin Leonard MC Foy vs United Africa Co. Ltd (1961) All ER 1169 and Manyange (deceased vs TG (Minor suing through her mother and next friend WMG, Civil Appeal E005 OF 2022).
18. On whether the 5<sup>th</sup> Defendant should be substituted, the Applicant submitted that a dead person who was sued cannot be substituted. Reliance was placed in the case of Limbe vs Wandhere & Anor ELC Case E001 of 2021) (2023) KEELC 16456, where the court held that it is trite that a suit against a deceased person is a nullity from inception, and a Legal Representative of his estate cannot be joined in the proceedings, and the import of such a suit is that, it is as if no suit had ever been filed against the deceased person.



19. Further reliance was placed in the case of *Pratap Chand Mehta vs Chisna Devi Meuta* Air 1988 Delhi 267; wherein the court held;

“..... if a suit is filed against a dead person, then it is a nullity and we cannot join any legal representative; you cannot even join any other party, because it is just as if no suit had been filed. on the other hand, if a suit has been filed against a number of persons, one of whom happens to be dead when the proceedings were instituted, then the proceedings are not null and void, but the court has to strike out the name of the party who has been wrongly joined. If the other case has been instituted against a dead person and that person happened to be the only person, then the proceedings are a nullity.....”

20. It was the applicant submissions that since the suit herein against the 5<sup>th</sup> Defendant was against a dead person, then it is a nullity, and it cannot be cured by substitution by the Legal Representative or by amendment. He urged the court to allow his application as the suit against the 5<sup>th</sup> Defendant(deceased) is a nullity and has no cure.

21. The Plaintiff/ Respondent filed his submissions dated 14<sup>th</sup> March 2025, through Lelei & Associates Advocates, wherein he submitted on two issues being;

- i. whether the suit against the 5<sup>th</sup> Defendant should be struck out;
- ii. whether the Applicant herein having taken out Letters of Administration Ad Litem for the estate of Seenka Ole Manyuele (deceased) should be joined in these proceedings.

22. On whether the suit against the 5<sup>th</sup> Defendant should be struck out, the Plaintiff/ Respondent relied on the case of *D T Dobie & Co (K) Ltd vs Muchina & another* [1982] KLR 1 where the court held that; -

“striking out pleadings is drastic step, which should be measure of last resort and should be in rare and extremely exceptional cases.”

It was the Plaintiff submissions that instead of striking the suit, the Plaintiff should be allowed to substitute the 5<sup>th</sup> Defendant with the Applicant herein, who has taken out Letters of Administration Ad Litem.

23. On whether the Applicant herein who has taken out Letters of Administration should be joined in this proceedings, the Plaintiff submitted that the Applicant is in possession of Letters of Administration Ad Litem and also in possession of the suit land, and thus is the right person to substitute the 5<sup>th</sup> Defendant who is deceased.

24. For the above submissions, the Plaintiff/ Respondent relied on the case of *Isaya Masira Momanyi vs Daniel Omwoyo & Another* ( 2017) eklr, where the court held; -

“it is trite that the estate of a deceased person can only be represented in any proceedings by a person who is duly authorized to do on behalf of the estate. Only a person who has been issued a grant of letters of Administration has capacity to represent the estate of a deceased person.”

25. Therefore, the Plaintiff submitted that since the Applicant has applied for Letters of Administration Ad Litem, then he can be substituted for the 5<sup>th</sup> Defendant, whom he is representing vide the said



Letters. Further reliance was placed in the case of *Rajesh Pranjivan Chudasama Vs Sailesh Prajivan Chudasam* (2014) eKLR, where the court held;

“As far as he was concerned, he moved to court by virtue of being a beneficiary for purpose of preserving the deceased’s estate. That may well be the case, but in our view, the position in law as regard locus standi in succession matters is well settled. A litigant is clothed with locus standi upon obtaining a limited or a full grant of letters of administration in case of intestate succession”

26. Further, the Plaintiff submitted that the suit herein is not dead since the intention to represent the deceased was already made by the Applicant before the suit was instituted and since the Plaintiff was not aware of such predicament at the time, it would be unfair to derail justice on such grounds, that the dead cannot be sued, and yet the representative is on record as a beneficiary, and is still in possession of the disputed parcel of land.
27. In further persuasion of the court not to strike out the suit, the Plaintiff relied on the case of *Abdirahim Abdi Vs Safi Petroleum Products Ltd & 6 Others* (2011) eKLR, where the court held that due regards should not be placed on technicalities of procedures, when determining issues, as they may result in miscarriage of justice. Further, that the court should exercise its discretion judiciously by considering the circumstances of the case.
28. Further reliance was placed in the case of *James Mangeli Musoo vs Ezeetec Ltd* eKLR 2017, where the court held;

“A technicality to me is a provision of law or procedure that inhibits or limits the direction of pleadings, proceedings and even decisions on court matters. Undue regard to technicalities therefore means that the court should deal and direct itself without undue consideration of ant laws, rules and procedure that are technical and or procedural in nature. It does not from the onset or in any way oust technicalities. It only emphasis a situation where undue regard to these should not be heard. This is more so where undue regard to technicalities would inhibit a just hearing, determination or conclusion of the issues in dispute”
29. The court was urged to dismiss the Applicant’s Application and allow the substitution of the 5<sup>th</sup> Defendant with the Applicant herein who holds Letters of Administration Ad Litem for the estate of the 5<sup>th</sup> Defendant now deceased.
30. The above are the arguments for and against the instant Application, which is anchored under Sections 1A & 3A of the *Civil Procedure Act*, which sections of the law deals with the overriding objective of the *Civil Procedure Act*, which is to facilitate the just, expeditious, proportionate and affordable resolution of Civil disputes. Section 3A of the same Act grants the court inherent power to make such orders as may be necessary for the ends of justice and to prevent abuse of the court process.
31. Further, the Application is brought under Order 2 Rule 15 of the Civil Procedure Rules, which deals with the striking out of pleadings, wherein the court is granted power and has discretion to order removal or amendment of pleadings if it discloses no reasonable cause of action, is scandalous, frivolous, vexatious or prejudice the fair trial.
32. The Applicant has sought for the striking out of the suit herein against the 5<sup>th</sup> Defendant Seenka Ole Manyuele, who died on 4<sup>th</sup> January 2020, before the suit was filed herein on 9<sup>th</sup> November 2023. Indeed, from the annexure MPM1, the 5<sup>th</sup> Defendant herein Seenka Ole Manyuele, died on 4<sup>th</sup> January 2020, long before the suit was filed on 9<sup>th</sup> November 2023.



33. It is trite that a dead person cannot be sued, and technically, a suit filed against a deceased person is invalid and a nullity from inception. This court was referred to the case of *Manyange (Deceased) v TG (Minor suing through her mother and next friend WMG) (Civil Appeal E005 of 2022)* [2024] KEHC 1083 (KLR) (7 February 2024) (Ruling), which quoted with approval the Indian case of *C. Muttu v. Bharath Match Works AIR 1964 Kant 293*, where the court observed as follows;

“If he (defendant) dies before the suit and a suit is brought against him in the name in which he carried on business, the suit is against a dead man and it is a nullity from its inception. The suit being a nullity, the writ of summons issued in the suit by whomsoever accepted is also a nullity. Similarly, an order made in the suit allowing amendment of plaint by substituting the legal representative of the deceased as the defendant and allowing the suit to proceed against him is also a nullity. It is immaterial that the suit was brought bona fide and in ignorance of the death of such a person.”

34. It is evident that that the 5<sup>th</sup> defendant herein was not alive when the suit was filed against him. Therefore, the suit against him is a nullity from inception, and a nullity cannot be rectified through amendments or substitution. The above position was submitted by the Applicant who relied on the case of *Benjamin Leonard Mc foy v. United Africa Company Limited [1961] All ER 1169*, wherein the court held;

“If an Act is void, then it is in Law a nullity. It is not only bad, but incurably bad. There is no need for an order of the court to set it aside. It is automatically null and void without more ado, though it is sometimes convenient to have the court declare it to be so. And every proceeding which is founded on it is also bad and incurably bad. You cannot put something on nothing and expect it to stay there. It will collapse.”

The suit against the 5<sup>th</sup> Defendant being a nullity, then it same is bad in law, and is automatically null and void, and there is nothing that can be done to salvage it for now. There being no doubt that the 5<sup>th</sup> Defendant was dead at the time of filing this suit, the said deceased Defendant cannot be substituted to breathe life into the suit.

35. The Plaintiff has urged the court not to strike out the suit, but to allow the substitution of the 5<sup>th</sup> Defendant with the Applicant. However, as observed above, a suit against a deceased person is a nullity, and it cannot be cured through substitution or joinder. Further, the Plaintiff had averred that this Application is a mere technicality, which should not be upheld at the expense of substantive justice. However, the issue of capacity to be sued goes to the jurisdiction of the court, to deal with a suit against a party. If a party is deceased, no suit can stand against him as he does not exist, and that goes to the substance of a suit and is not a mere technicality. The issue of a deceased person having been shed is a fundamental issue of legal capacity and is thus not a technicality.
36. On whether the 5<sup>th</sup> Defendant who is deceased can be substituted, is trite that technically, the case herein was non-suited ab initio, as a dead person cannot be sued. Courts have dealt with this issue of whether or not such suit can be cured by a substitution, and have severally arrived at a verdict, that it cannot. See the case of *Viktar Maina Ngunjiri & 4 others vs Attorney General & 6 others (2018) eKLR. I* wherein the court relied on the case of *C. Muttu vs. Bharath Match Works AIR 1964 Kant 293(Supra)*. This court too finds and holds that the suit against the 5<sup>th</sup> Defendant was a nullity, and he can therefore not be substituted.
37. Having found that the Plaintiff/Respondent sued the 5<sup>th</sup> Defendant, who was deceased by the time of filing the suit, and thus the suit against him is a nullity, asking this court to substitute the 5<sup>th</sup>



Defendant(deceased) with the Applicant is like flogging a dead horse, and the said substitution cannot breathe life into a suit which is a nullity.

38. For the above reasons, this court finds and holds that the suit against the 5<sup>th</sup> Defendant is a nullity, bad in law, and cannot stand. Thus, the suit against the 5<sup>th</sup> Defendant(deceased) herein is struck out entirely with costs to the Applicant.

It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAROK THIS 3<sup>RD</sup> DAY OF APRIL, 2025**

**L. Gacheru**

**Judge**

Delivered online in the presence of

Meyoki – Court Assistant

N/A for the Plaintiff/ Respondent

N/A for 1<sup>st</sup> to 5<sup>th</sup> Defendants

N/A for 6<sup>th</sup> to 8<sup>th</sup> Defendants

Ms. Cheruto for the Applicant

**L. Gacheru**

**Judge**

