



**Mugo (Suing as the Personal Representative of the Estate of the Late Silas Mugo Njoka) v Njoka & 8 others; Nthia & 11 others (Defendant) (Environment & Land Case 335 of 2015) [2025] KEELC 3324 (KLR) (2 April 2025) (Ruling)**

Neutral citation: [2025] KEELC 3324 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT EMBU  
ENVIRONMENT & LAND CASE 335 OF 2015**

**AK BOR, J  
APRIL 2, 2025**

**BETWEEN**

**SIMON NYAGA MUGO ..... APPLICANT  
SUING AS THE PERSONAL REPRESENTATIVE OF THE ESTATE OF THE LATE  
SILAS MUGO NJOKA**

**AND**

**STANLEY NYONI NJOKA ..... 1<sup>ST</sup> PLAINTIFF  
ALBERT IRERI ..... 2<sup>ND</sup> PLAINTIFF  
NJUKI NJOKA ..... 3<sup>RD</sup> PLAINTIFF  
MUGO JAVAN ..... 4<sup>TH</sup> PLAINTIFF  
NJERU NJOKA ..... 5<sup>TH</sup> PLAINTIFF  
NJOKA KINYAMARIO ..... 6<sup>TH</sup> PLAINTIFF  
NJUE MUBORO ..... 7<sup>TH</sup> PLAINTIFF  
GATHAKA JAVAN ALIAS WILSON NJUE JAVAN ..... 8<sup>TH</sup> PLAINTIFF  
SILAS MUGO NJOKA ..... 9<sup>TH</sup> PLAINTIFF**

**AND**

**CHARLES NYAGA NTHIA & 11 OTHERS & 11 OTHERS & 11  
OTHERS ..... DEFENDANT**



## RULING

1. The 1<sup>st</sup> and 2<sup>nd</sup> Applicants brought the application dated 23/1/2025 seeking to revive the suit that had abated as against the 1<sup>st</sup> Plaintiff. They sought to substitute the 1<sup>st</sup> Plaintiff, Silas Mugo Njoka (deceased) with the 1<sup>st</sup> Applicant, Simon Nyaga Mugo, who is his legal representative. They also sought leave to join various parties, that is Eunice Ita Ileri as the legal representative of the estate of the 3<sup>rd</sup> Plaintiff, Albert Ileri; Silas Munene Njuki as the legal representative of the estate of the 4<sup>th</sup> Plaintiff, Njuki Njoka alias Benson Njuki; Stanley Nyoni Njoka as the legal representative of the 7<sup>th</sup> Plaintiff, Njoka Kinyamario and Jane Muturi Ileri as the legal representatives of the estate of the 8<sup>th</sup> Plaintiff, Njue Muboro who are said to be dead.
2. The application was made on the grounds that the 1<sup>st</sup> Plaintiff died on 6/8/2017 after the filing of this suit and that the 1<sup>st</sup> Applicant had obtained letters of administration ad litem for the estate of the 1<sup>st</sup> Plaintiff. However, the time for substituting him had lapsed resulting in abatement of the 1<sup>st</sup> Plaintiff's suit. The other parties to be joined in the suit are the personal representatives of the estate of Albert Ileri who died on 2/7/1999, Njue Mavoro who died on 23/6/2006, Benson Njuki who died on 25/12/2002 and Njoka Kinyamario who died on 24/4/2011.
3. This suit relates to a Minister's appeal award in Minister's Appeal Case No. 203 of 1999 which affected the ownership of the parcels of land known as Mbeere/Mbita/1006, 1104, 1105, 1106, 1107, 1109, 1100 & 1110. Before the Minister's decision, the late Albert Ileri was the registered owner of Mbeere/Mbita/1105, the late Benson Njuki alias Njuki Njoka was the registered owner of Mbeere/Mbita/1106 and the late Njoka Kinyamario and the late Njue Muborowere were the joint registered owners of Mbeere/Mbita/1100.
4. The suit challenges the legality and propriety of the Minister's award and the Plaintiffs included the names of the parties who had died when they filed this suit on 2/11/2015.
5. Further, it was contended that the inclusion of the dead persons as parties to this suit was improper since they were dead by the time this suit was filed. The Applicants contended that their inclusion was inadvertent and was not done in bad faith. Further, that the intended Plaintiffs were the proper parties to this suit because the interests of the dead persons were affected by the Minister's award, which is being challenged in this suit. It was urged that it is in the interest of justice for the intended Plaintiffs to be joined to the suit to avoid a multiplicity of suits relating to the same minister's decision. The Applicants explained that the delay in filing the application was unintentional and that the 1<sup>st</sup> Applicant was not properly appraised on court procedures previously. The Applicants added that this court had the discretion to revive the suit by the 1<sup>st</sup> Plaintiff.
6. The 1<sup>st</sup> and 2<sup>nd</sup> Applicants swore the affidavits in support of the application and annexed copies of the letters of administration ad litem and the 2<sup>nd</sup> Applicant's authority to plead on behalf of the 1<sup>st</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup> & 8<sup>th</sup> Plaintiffs. They also exhibited copies of the green cards for the suit land, the plaint dated 3/10/2015 and the death certificates for the dead parties.
7. The application was opposed by the 12<sup>th</sup> Defendant, Duncan Njeru Nthia vide the replying affidavit in which he deponed that the reliefs sought by the Applicants could not issue because the 1<sup>st</sup> Plaintiff died seven years ago and as such the suit against the 1<sup>st</sup> and 2<sup>nd</sup> Defendants abated by virtue of Order 24 Rule 3 of the Civil Procedure Rules. Further, that it took the 1<sup>st</sup> Applicant three years to obtain the



grant of letters of administration ad litem after the death of the 1<sup>st</sup> Plaintiff and another four years to file the instant application.

8. The 12<sup>th</sup> Defendant urged that there was inordinate delay in filing the application and no reasonable explanation was given for the delay. He deponed that the Applicants could not feign ignorance of the court procedure when the 1<sup>st</sup> Applicant had been attending court without fail since 2017, when the 1<sup>st</sup> Plaintiff died, and the court had on several occasions directed him to file a proper application.
9. The 12<sup>th</sup> Defendant contended that the suit by the 3<sup>rd</sup>, 4<sup>th</sup>, 7<sup>th</sup> and 8<sup>th</sup> Plaintiffs was null and void ab initio and should be struck out with costs for having been filed before letters of administration were obtained. It was pointed out that at the time of filing suit, the Applicants were represented by Mugambi Njeru & Company Advocates and the parties should have been advised accordingly.
10. It was contended that the Applicants did not explain how the dead Plaintiffs instructed Mugambi Njeru & Company Advocates to file this suit on their behalf and even authorised the 2<sup>nd</sup> Applicant to plead and swear affidavits on their behalf when they were already dead. Further, that the court cannot be invited to regularise an illegality.
11. Parties filed and exchanged written submissions which the court has considered. The Applicants submitted that the delay by the 1<sup>st</sup> Applicant in filing the application was not inordinate as the Applicant was not appraised of court procedures. He explained that on previous occasions, he had attempted through other applications to substitute the dead persons but the applications never took off.
12. The 2<sup>nd</sup> Applicant asserted that the intended Plaintiffs are the personal representatives of the dead persons who were initially included in the suit and that their joinder was necessary to protect their interests in the disputed land. While citing various decisions, the Applicants emphasised that joinder was essential for a fair adjudication of the dispute and that the application had been filed in a timely manner. Further, they submitted that costs should abide the outcome of the main suit and urged the court to allow the application.
13. The Defendants submitted that no reasonable grounds had been given by the Applicants to warrant revival of the suit and that there was inordinate delay in filing the present application. Further, that the Applicants filed the application without seeking leave of the court to extend the time within which to do so. The Defendants urged that the suit by the 1<sup>st</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 7<sup>th</sup> and 8<sup>th</sup> Plaintiff's was fatally defective for being filed by dead persons.
14. The issues for determination are whether the court should revive the suit by the 1<sup>st</sup> Plaintiff's that has abated; whether the court should substitute the 1<sup>st</sup> Plaintiff with his legal representative Simon Nyaga Mugo; whether the court should join the legal representatives of the estates of the 3<sup>rd</sup>, 4<sup>th</sup>, 7<sup>th</sup> and 8<sup>th</sup> Plaintiffs; and lastly, whether the suit against the deceased 3<sup>rd</sup>, 4<sup>th</sup>, 7<sup>th</sup> and 8<sup>th</sup> Plaintiffs was defective for being filed without letters of administration.
15. Under Order 24 Rule 3(2) of the Civil Procedure Rules, a suit abates if no application for substitution is made within one year of the date the Plaintiff died. The court has the power to extend such time upon application upon good reason. Order 24 Rule 7(2) grants the court the discretion to revive an abated suit upon sufficient cause being shown.
16. In this case, the 1<sup>st</sup> Plaintiff died on 6/8/2017 which means that the suit abated on 6/8/2018. The present application to revive the suit was filed on 23/1/2025 which is 6 years and 5 months after the suit abated. The 1<sup>st</sup> Applicant has argued that the delay was not intentional as he was previously not properly appraised of court procedures. The Respondents countered that argument by stating that



the Applicant was represented by Mugambi Njeru & Company Advocates and therefore they should have been advised accordingly. The court could not agree more. The reasons advanced for the delay in bringing the application are not sufficient to justify revival of the abated suit.

17. A party seeking revival of an abated suit should first seek the extension of time where the time to do so has lapsed. An application for extension of time should precede the prayer for revival or joinder of a deceased Plaintiff's legal representative.
18. In this case, the 1<sup>st</sup> Applicant did not first seek the extension of time to revive the suit, rendering the application defective. Consequently, the prayer for revival of the abated suit is denied. Based on this, the prayer for substitution automatically fails.
19. The Applicants also seek to join the legal representatives of 3<sup>rd</sup>, 4<sup>th</sup>, 7<sup>th</sup> and 8<sup>th</sup> Plaintiffs who are dead to the suit. The 3<sup>rd</sup> Plaintiff died on 2/7/1999, the 4<sup>th</sup> Plaintiff died on 25/12/2002, the 7<sup>th</sup> Plaintiff died on 24/4/2011 whereas the 8<sup>th</sup> Plaintiff died on 23/6/2006 according to the death certificates annexed to the Applicant's supporting affidavits. This means that at the time of filing the suit on 2/11/2015, those persons listed as Plaintiffs were already dead. Courts have consistently held that a suit filed against a dead person is a nullity ab initio (See Viktar Maina Ngunjiri & 4 others v Attorney General & 6 others [2018] KEHC 1972 (KLR). In the Indian Case of Pratap Chand Mehta vs Chrisna Devi Meuta AIR 1988 Delhi 267 cited therein it was held that if a suit was filed against a dead person then it was a nullity and the court could not join any legal representative because it was just as if no suit had been filed.
20. The inclusion of dead persons as Plaintiffs when the suit was instituted rendered their suit a nullity and any attempt to join their legal representatives to such suit is legally untenable as they cannot take over a nullity.
20. The suit filed by the 1<sup>st</sup> Plaintiff abated by operation of law.
21. The court declines to grant the orders sought in the application dated 23/1/2025. The suit filed by the 3<sup>rd</sup>, 4<sup>th</sup>, 7<sup>th</sup>, and 8<sup>th</sup> Plaintiffs is struck out with costs to the Defendants.

**DELIVERED VIRTUALLY AT EMBU THIS 2<sup>ND</sup> DAY OF APRIL 2025.**

**K. BOR**

**JUDGE**

In the presence of: -

Mr. Waititu Mburu for the Plaintiffs

Ms. Lilian Nchogu for the Defendants

Diana Kemboi- Court Assistant

