



Waweru (Suing at the Legal Representative of the Estate of Jecinta Njeri Magu) v Njoki & 3 others (Environment & Land Case E279 of 2018) [2022] KEELC 13566 (KLR) (13 October 2022) (Ruling)

Neutral citation: [2022] KEELC 13566 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E279 OF 2018**

**LN MBUGUA, J
OCTOBER 13, 2022**

BETWEEN

FRANCIS WAWERU (SUING AT THE LEGAL REPRESENTATIVE OF THE ESTATE OF JECINTA NJERI MAGU) APPLICANT

AND

KARANJA MOHAMMED NJOKI 1ST RESPONDENT

SHADRACK NDUGIRE MUYA 2ND RESPONDENT

MARY WAMAITHA NDUGIRE 3RD RESPONDENT

EMBAKASI RANCHING COMPNAY LIMITED 4TH RESPONDENT

RULING

1. Before me is an application dated May 6, 2022 in which the applicant seeks orders that Jecinta Njeri Magu alias Jesida N Magu (deceased) be substituted with Francis Waweru the applicant herein who then should be granted leave to amend the plaint accordingly and be allowed to file a further list of documents and witness statements.
2. The application is premised on the grounds that Jecinta Njeri Magu alias Jesida N Magu (deceased) died on December 6, 2020 during the pendency of the said suit. That Francis Waweru the applicant herein being the son of the deceased has obtained letters of administration ad litem for purposes of prosecuting the pending suit.
3. The applicant further states that the estate of the deceased has during the pendency of this suit obtained the certificate of lease of title number Nairobi/Block 105/769, being one of the suit properties, hence the need to file further documents.



4. It is averred that the proposed amendments arise out of the same facts or substantially the same facts and the proposed amendments will assist the court in determining the real issues in dispute between the parties and that in any event no prejudice will be occasioned upon the respondent.
5. The respondents opposed the application vide the replying affidavit dated July 13, 2022 sworn by the 2nd respondent where they aver that the plaintiff died on December 6, 2020 thus the suit abated by operation of the law on December 6, 2021, hence the application is a non-starter and that there is no suit capable of being amended.
6. On July 20, 2022, this court gave directions for the application to be heard by way of written submissions of which the applicant was to file and serve their submissions by August 3, 2022, where as the respondents were to file theirs by August 17, 2022. It is noted that the respondents have not filed their submissions. but again, it is apparent that they were never served on time as directed by the court since the submissions uploaded in the CTS by the applicant are dated and filed on August 30, 2022. I find that it would be prejudicial to the respondents if this court was to consider the submissions of the applicant which were filed in contravention of the court's directions of July 20, 2022. In the circumstances, the said submissions of the applicant are hereby expunged.
7. The provisions of order 24 rule 3 (2) provides that:

“Where within one year no application is made under subrule (1), the suit shall abate so far as the deceased plaintiff is concerned...”.
8. In the case of *Sweilem Gbeithan Saanceru v Commissioner of Lands (being sued through the Attorney General) & 5 others* [2015] eKLR, the Court of Appeal had this to say in relation to the provisions of order 24 of the *Civil Procedure Rules*:

“There are three stages according to these provisions. As a general rule the death of a plaintiff does not cause the suit to abate if the cause of action survives. But within one year of the death of the plaintiff or within such time as the court may in its discretion for “good reason” determine, an application must be made for the legal representative of the deceased plaintiff to be made a party. The “good reason” therefore relates to application for extension of time to join the plaintiff’s legal representative to the suit.

Secondly, if no such application is made within one year or within the time extended by leave of the court, the suit shall abate. Where a suit abates no fresh suit can be brought on the same cause of action.

Thirdly, the legal representative of the deceased plaintiff may apply for the abated suit to be revived after satisfying the court he was prevented by “sufficient cause” from continuing with the suit. The effect of an abated suit is that it ceases to exist in the eye of the law. The abatement takes place on its own force by passage of time, a legal consequence which flows from the omission to take the necessary steps within one year to implead the legal representative of the deceased plaintiff. Emphasis added.
9. This suit certainly abated through operation of the law on December 6, 2021. The applicant has neither sought orders for extension of time to be joined as a legal representative, nor has he sought orders for the revival of the suit. In the circumstances, I find that the application is not merited. The same is hereby dismissed with costs to Respondents.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 13TH DAY OF OCTOBER, 2022 THROUGH MICROSOFT TEAMS.



LUCY N. MBUGUA

JUDGE

In the presence of:-

Nyarango for plaintiff

Muriuki for the 4th defendant

Court assistant: Eddel/Joan

