



**Tanui v Chepkaigat & 5 others (Environment & Land Case 867 of 2012)
[2022] KEELC 14696 (KLR) (10 November 2022) (Ruling)**

Neutral citation: [2022] KEELC 14696 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ENVIRONMENT & LAND CASE 867 OF 2012
EO OBAGA, J
NOVEMBER 10, 2022**

BETWEEN

KIPROTICH TANUI PLAINTIFF

AND

LEAH CHELEL CHEPKAIGAT 1ST DEFENDANT

THOMAS KIPKEMBOI SINGOE'I 2ND DEFENDANT

JOEL KIPTOO KEMBOI 3RD DEFENDANT

JOHANA KIPKERICH TOO 4TH DEFENDANT

SILA KIPKETER 5TH DEFENDANT

STANLEY KIPKOECH 6TH DEFENDANT

RULING

1. This is a ruling in respect of notice of motion dated June 22, 2018 which seeks to substitute the plaintiff with one Hellen Jemaiyo Kiprotich. The applicant contends that the plaintiff died on March 21, 2017 and that his wife has since taken out letters of administration *ad litem* and therefore wishes to be substituted as plaintiff in place of the deceased.
2. The applicant states that the need to substitute is meant to avoid this suit from abating. The applicant further states that substitution will not prejudice the respondents in any way and her presence in the suit will assist the court to adjudicate the issues in controversy.
3. The defendants/respondents opposed the applicant's application based on grounds of opposition dated June 29, 2021. The respondents state that this court is *functus officio* having made an order on June 27, 2018 marking the suit as abated. The respondents therefore contend that the present



application is *res judicata* and further that the application for substitution is a nullity as no enlargement of time is sought coupled with revival of the suit as required under order 24 of the [Civil Procedure Rules](#).

4. The parties were directed to file written submissions within 14 days from June 30, 2021. A year later, no submissions had been filed. The court again gave parties 14 days each to file submissions but as at October 14, 2022 when writing this ruling, no party had filed written submissions.
5. I have considered the applicant's application together with the opposition to the same by the respondents. The only issue for determination is whether the applicant should be substituted in this suit in place of the deceased.
6. The deceased plaintiff died on March 21, 2017. The widow of the deceased obtained letters of administration *ad litem* on April 23, 2018. As at the time the applicant obtained the grant of letters of administration *ad litem*, the suit had abated. There was no application made to revive the suit.
7. The court record shows that on June 27, 2018, the counsel for the plaintiff indicated to court that they intended to file an application to revive the suit as one year had passed since the demise of the deceased. The court then proceeded to mark the suit as abated and ordered that the file be closed and taken to the archives.
8. It is clear that this suit has abated and an order marking it so has been made by the court. There was no application made to enlarge time as envisaged under order 24 rules (2) or revival of the suit as envisaged under order 24 rule 7(2) of the [Civil Procedure Rules](#). This being the case, I find that the application for substitution without first seeking for enlargement of time or revival of the suit as provided in law is incompetent. The applicant's application is hereby dismissed with costs to the respondents.

It is so ordered.

DATED, SIGNED AND DELIVERED AT ELDORET ON THIS 10TH DAY OF NOVEMBER, 2022.

E. O. OBAGA

JUDGE

In the virtual absence of parties who had been notified of the ruling date.

Court Assistant –Albert

E. O. OBAGA

JUDGE

10TH NOVEMBER, 2022

