



REPUBLIC OF KENYA



**Gupta v Kache & 2 others (Environment & Land Case 278 of 2016)  
[2022] KEELC 15374 (KLR) (19 December 2022) (Ruling)**

Neutral citation: [2022] KEELC 15374 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MALINDI  
ENVIRONMENT & LAND CASE 278 OF 2016  
MAO ODENY, J  
DECEMBER 19, 2022**

**BETWEEN**

**PREM LAL RAMNATH GUPTA ..... PLAINTIFF**

**AND**

**ESTHER KACHE ..... 1<sup>ST</sup> DEFENDANT**

**COUNTY GOVERNMENT OF KILIFI ..... 2<sup>ND</sup> DEFENDANT**

**ATTORNEY GENERAL (ON BEHALF OF THE COUNTY LAND REGISTRAR,  
KILIFI) ..... 3<sup>RD</sup> DEFENDANT**

**RULING**

1. This ruling is in respect of a notice of motion dated August 12, 2021 by the plaintiff/applicant seeking the following orders: -
  - a. That the honourable court do reinstate and/or revive the plaintiff's suit;
  - b. That the honourable court do extend the time within which to substitute the deceased plaintiff;
  - c. That Rupa Bulibuli Bose Gupta being the administrator of the estate of Prem Lal Ramnath Gupta (deceased the plaintiff herein be substituted as the plaintiff.
  - d. That the cost of this application be provided for.
2. The applicant filed grounds in support of the application and an affidavit sworn by Rupa Bulibuli Bose Gupta, the plaintiff's widow who deponed that following the plaintiff's death on November 24, 2019, she filed an application for grant of letters of administration on January 20, 2020, which were eventually issued on February 1, 2021.



3. The 2<sup>nd</sup> plaintiff opposed the application vide grounds of opposition dated June 9, 2022 and stated that the application was frivolous, vexatious and bad in law; that the suit abated by operation of the law; and that the application offends the provisions of order 24 rule 3 of the Civil Procedure Rules.
4. Counsel agreed to canvas the application vide written submissions which were duly filed.

### **Plaintiff's Submissions**

5. Counsel submitted that while order 24 rule 3 requires an applicant to file an application for substitution within a period of 1 year, rule 7 makes room for revival of an abated suit on condition that sufficient cause is shown of which counsel stated that the applicant was not able to make the present application in good time because until February 2021, she had not been appointed legal representative of the plaintiff's estate.
6. The applicant explained that the delay was occasioned by the disruption of court processes amid the Covid-19 pandemic which amounts to sufficient cause as was held in the case of Attorney General v Law Society of Kenya & another [2013] eKLR.
7. Counsel also relied on the cases of Mathenge Ngatia Ngari v Christopher Wangombe Ngatia & another [2020] eKLR; and James Mwaniki Kinuthia v Hemed Iddi Mukui & another [2019] eKLR where courts revived abated suits.
8. It was counsel's submission that the plaintiff passed away on November 24, 2019 and that this suit abated in November 2020 by operation of the law and that the applicant has given sufficient reason why she did not file the application for substitution within the stipulated period due to the slow process of getting letters of administration due to Covid 19. Counsel urged the court to allow the application as prayed

### **2<sup>nd</sup> Defendant's Submissions**

9. Counsel submitted that the application was not proper before the court as the applicant ought to have sought time be first extended before making an application for revival and substitution and relied on the cases of Rebecca Mijide Mungole & another v Kenya Power & Lighting Company Ltd & 2 others [2017] eKLR; and Joseph Gachubi Muthanji v Mary Wambui [2014] eKLR.
10. Counsel for the 2<sup>nd</sup> defendant further submitted that a prayer for revival of suit is not allowed as a matter of right and that the burden to provide sufficient cause was upon an applicant as was held in the case of Rebecca Mijide Mungole case [*supra*] which the applicant has failed to discharge.
11. Ms Gitari submitted that the issue of timelines of filing the application is not a technicality of procedure which may be accommodated under article 159 of the Constitution and relied on the cases of Charles Wanjohi Wathuku v Githinji Ngure & another [2016] eKLR; and John Mutai Mwangi & 26 others v Mwenja Ngure & 4 others [2016] eKLR and urged the court to dismiss the application with costs.

### **Analysis and Determination**

12. The issue for determination is whether the applicant has met the threshold for extension of time to revive a suit and substitution of the plaintiff.



13. Order 24 of the [Civil Procedure Rules, 2010](#) comprehensively outlines what ought to happen if a party or parties to a suit dies. Rule 3 thereon provides:

1. Where one of two or more plaintiffs dies and the cause of action does not survive or continue to the surviving plaintiff or plaintiffs alone, or a sole plaintiff or sole surviving plaintiff dies and the cause of action survives or continues, the court, on an application made in that behalf, shall cause the legal representative of the deceased plaintiff to be made a party and shall proceed with the suit.
2. Where within one year no application is made under subrule (1), the suit shall abate so far as the deceased plaintiff is concerned, and, on the application of the defendant, the court may award to him the costs which he may have incurred in defending the suit to be recovered from the estate of the deceased plaintiff:  
Provided the court may, for good reason on application, extend the time.

Rule 7 thereon further provides for effect of abatement or dismissal of the suit as follows:-

1. Where a suit abates or is dismissed under this order, no fresh suit shall be brought on the same cause of action.
2. The plaintiff or the person claiming to be the legal representative of a deceased plaintiff or the trustee or official receiver in the case of a bankrupt plaintiff may apply for an order to revive a suit which has abated or to set aside an order of dismissal; and, if it is proved that he was prevented by any sufficient cause from continuing the suit, the court shall revive the suit or set aside such dismissal upon such terms as to costs or otherwise as it thinks fit.

13. It is not in dispute that the plaintiff herein died on November 24, 2019 and that this suit abated on November 25, 2020. There is further not disputed that the applicant sought and obtained letters of administration on February 1, 2021 which according to the applicant she petitioned for the same on January 20, 2020 but the process disrupted by the Covid-19 pandemic.

14. It is trite that an order for revival of a suit and substitution can be issued after abatement as provided for under order 24 rule 3 of the [Civil Procedure Rules](#) which provides that

“Provided the court may, for good reason on application, extend the time”.

Also, order 24 rule 7 (2) of the [Civil Procedure Rules](#) permits a person claiming to be the legal representative of a deceased plaintiff to apply for an order to revive such a suit the applicant must demonstrate that he/she has a good reason or sufficient cause.

15. The court takes judicial notice of the fact that the applicant took steps that she gets letters of administration during the period of Covid 19 when the courts were also in the dark on how to deal with the pandemic in terms of contact with the public and filing in the registries. The excuse of the Covid 19 pandemic is not a blanket excuse for inordinate delay in filing documents, it must be looked at case by case.

16. The applicant filed both applications for extension of time and revival of the suit which is in order. I find that the applicant has explained sufficient cause why she did not file the application within the stipulated period. Courts should not lock out litigants from the seat of justice on flimsy reasons. If an



applicant establishes that there was sufficient cause why certain processes were not undertaken in good time, the court is inclined to grant the orders as prayed.

17. In the circumstances I find that the application has merit and is therefore allowed as prayed. Applicant to substitute the plaintiff within 14 days from the date of this ruling.

**DATED, SIGNED AND DELIVERED AT MALINDI THIS 19<sup>TH</sup> DAY OF DECEMBER, 2022.**

**MA ODENY**

**JUDGE**

