



REPUBLIC OF KENYA



KENYA LAW
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**M'Rintara v Ncokera (Environment & Land Case 11 of 2019)
[2022] KEELC 15271 (KLR) (7 December 2022) (Ruling)**

Neutral citation: [2022] KEELC 15271 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT & LAND CASE 11 OF 2019
CK NZILI, J
DECEMBER 7, 2022**

BETWEEN

SALOME KAINDA M'RINTARA PLAINTIFF

AND

M'NDEGWA NCOKERA DEFENDANT

RULING

1. Through an application dated October 3, 2022 the plaintiff under Order 24 Rules 4, 5 & 7 (2) of the *Civil Procedure Rules*, Rules 14, 5th Schedule of the *Law of Succession Act* and Article 50 (1) of the *Constitution*, the court is asked to revive the suit against the defendant, extend time for the substitution of the deceased defendant, order for Gladys Gaitenga M'Chokera and Henry Kiogora M'Chokera to apply for grant of letters of administration or limited grant ad litem to defend the suit and or nominate the proposed parties as representatives of the estate of the deceased for purposes of defending this suit.
2. The application is based on the grounds on its face and on the affidavit sworn by Salome Kainda M'Rintara on October 3, 2022.
3. The plaintiff averred that she learned of the death of the defendant on October 11, 2021; the defendant was a bachelor; none of the siblings were willing to take out legal representation; there has been no delay; the interest of justice dictates the land issue be determined on merits; there was a sale agreement which the deceased's father failed to transfer the land to the plaintiff's late husband; the deceased was representing the estate of his father as per annexures SKM '1', now survived by the proposed parties as per the chiefs letter marked SKM '2' & '3'; the defendant's lawyers on record have failed as officers of the court to act in good time or at all despite promises to the court; the proposed parties are next in line in the order of priority to apply for grant and lastly, that she was willing to facilitate the process.
4. This matter came up for hearing on February 28, 2022 when the court was informed about the death of the defendant said to have occurred on July 13, 2021. The court gave the defendant's counsel two



months to substitute the deceased defendant. On July 28, 2022 counsel for the defendant told the court the family of the deceased was unable to agree on the proposed administrator. The court gave another mention for October 18, 2022 when this was brought to its attention.

5. There is no opposition by the defendant for obvious reasons. The plaintiff has brought no evidence before the court by way of a burial permit or a death certificate as proof of the death of the defendant. Annexures marked SKM '1', '2' & '3' to the supporting affidavit have not been issued in line with the Registration of Births and Deaths Act. The exact date when the defendant passed on is not indicated in any of those annexures.
6. This court lacks powers to handle probate disputes under the [Law of Succession Act](#) and the Probate and Administration Rules. Such powers fall under the probate court. Jurisdiction is everything and without it the court downs its tools as held in [Owners of Motor Vessel Lillian 'S' v Caltex Oil \(Kenya\) Ltd \[1989\] KLR 1](#).
7. There is nothing that the plaintiff has attached to show to this court that she submitted to the jurisdiction of the probate court and perhaps took out citation proceedings against the proposed parties to represent the deceased defendant as soon as the issue of the death was raised on February 28, 2022 by the counsel for the defendant.
8. The suit belongs to the plaintiff and not the counsel for the deceased defendant. The plaintiff should have done more than to sit back and wait for her case to collapse and or abate.
9. The law allows the plaintiff to cite the relatives of the deceased defendant to take out letters of administration and in the alternative, invoke the services of the public trustee.
10. The plaintiff has taken none of these measures. A suit which has abated can only be revived and the time extended to revive it where there are potential parties with capacity to take up the brief.
11. There must be sufficient cause for a court to revive an abated suit as was held in [Titus Kiragu vs Mugo Mathai \(2015\) eKLR](#), [Charles Mugunda vs AG and another \(2015\) eKLR](#) and [AG vs LSK & another \(2013\) eKLR](#).
12. In [Kishor Kumar Dhanji Varsani vs Amolak Singh & 4 others \(2016\) eKLR](#), the Court of Appeal held that the revival of an abated suit was possible so long as there was sufficient explanation for the reason of not pursuing the suit before it abated which must be candid and plausible. In [Said Sweilem Gheitham Saanum vs Commissioner of lands \(sued through AG & 5 others \(2015\) eKLR](#), there was delay, confusion and disagreements about who was to file for the letters of administration. The court held thus;

' Justice shall not be delayed is no longer a mere legal maxim in Kenya but a constitutional principle that emphasizes the duty of the advocates, litigants and other court users to ensure the timely and efficient disposal of cases.

The principles which are reiterated in Sections 1A & 1B of the [Civil Procedure Act](#) are intended to facilitate the just expeditious proportionate and affordable resolution of disputes. The principle cannot therefore be a panacea which heals every sore in litigation, neither is it a licence to parties to ignore or contravene the law and rules of procedure'

13. In [Timoi Farmers & Estate Ltd vs Kipngeno Arap Ngeny & another \(2022\) eKLR](#), the applicant was seeking the revival and substitution of the 1st defendant who was deceased on the basis of late discovery of death, wrongly named administrator, change of advocates and heavy investment in the land hence prejudice likely to be occasioned. The court found that the explanation given was not candid, plausible, excusable and the delay of six years inordinate.



14. Given the foregoing, I have come to the irresistible conclusion that as much as the delay is not inordinate, the plaintiff is yet to move in the right direction, so as to fit within the confines of Order 24 Rule 7 of the Civil Procedure Rules.
15. This motion must and is hereby dismissed with no orders as to costs. The suit is marked as withdrawn under Order 25 Civil Procedure Rules with no orders as to costs.

DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT

THIS 7TH DAY OF DECEMBER, 2022

In presence of:

C/A: Kananu

Karanja for applicant

HON. C.K. NZILI

ELC JUDGE

