



**Kamanda v Karuga & 2 others (Environment and Land Appeal
E026 of 2024) [2025] KEELC 4155 (KLR) (27 May 2025) (Judgment)**

Neutral citation: [2025] KEELC 4155 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MURANGA
ENVIRONMENT AND LAND APPEAL E026 OF 2024**

MN GICHERU, J

MAY 27, 2025

BETWEEN

ARTHUR HUNJA KAMANDA APPELLANT

AND

SAMSON MAINA KARUGA 1ST RESPONDENT

THE COUNTY GOVERNMENT OF MURANG'A 2ND RESPONDENT

THE LAND REGISTRAR OF MURANG'A 3RD RESPONDENT

JUDGMENT

1. On 31-5-2024, the learned Senior Principal Magistrate Murang'a in Murang'a MCELC/E078/2021 allowed the notice of motion dated 26-10-2023 and made the following orders.
 1. The Plaintiff/Applicant be and is hereby granted leave to amend the Complaint and join Arthur Hunja Kamanda and Rose Waruguru as the 3rd and 4th Defendants in the wake of the striking out of the erstwhile 1st Defendant James Kamanda as a party to the suit.
 2. That the annexed draft of the amended complaint be and is hereby deemed as duly filed upon payment of the requisite court fees.
 3. That costs of this application shall be in the cause.
 4. The parties are given 21 days from today's ruling date to have complied with the Civil Procedure Rules. Pretrial conference on 25-6-2024.
2. Dissatisfied with this ruling, the Appellant filed a memorandum of appeal dated 21-6-2024 citing the following grounds of appeal. The learned magistrate erred in law in-
 - i. ordering joinder of legal representatives in a case neither filed against a deceased party in his life time nor against his administrators,



- ii. not finding that the suit was a nullity for having been filed against a dead litigant hence dead in water,
 - iii. finding that a dead suit for lack of a legal representative at the time of filing the suit could be subsequently revived by way of joinder of parties albeit holding a grant of representation.
3. The Appellant seeks the following orders.
- 1. The application dated 26-10-2023 be dismissed with costs.
 - 2. The order of joinder of the Appellant be vacated and the suit against the estate of Eustace Kamanda Gichira be struck out.
 - 3. The costs in this Court and in the lower Court be awarded to the Appellant.
4. The relevant facts of the case are as follows. The 1st Respondent filed Murang'a CM ELC No. E078 of 2021 in which James Kamanda was a party. In the case, James Kamanda raised a preliminary objection to the effect that he had no capacity/locus standi to be sued on behalf of the estate of his late father Kamanda Gichira. The learned magistrate dismissed the preliminary objection. James Kamanda filed appeal No. E018 of 2022 challenging the dismissal of his preliminary. The appeal was successful. This Court in a judgment dated 28-9-2023 held that James Kamanda had no capacity to be sued on behalf of the estate of Kamanda Gichira. Consequently, the suit against him was struck out for want of locus.
5. Thereafter, the 1st Respondent filed a notice of motion dated 26-10-23 seeking to amend the Plaintiff and join Arthur Hunja and Rose Waruguru as the 3rd and 4th Defendants. The motion was opposed by the Appellant on several grounds such as being res judicata, defective, incompetent, mischievous, unprocedural, misnomer and others.
6. In her ruling dated 31-5-2024 the learned magistrate allowed the motion dated 26-10-2023 on the following grounds. Firstly, the two new parties were the legal representatives of the estate of the deceased as evidenced by a copy of grant issued in Nairobi High Court Succession Cause No. 728 of 1987. Secondly, unlike James Kamanda who lacked, Arthur Hunja and Rose Waruguru had no such incapacity. Thirdly, it is not the suit that was struck out. Rather, it was James Kamanda who was struck out for lack of capacity but the suit remained intact.
7. I have carefully considered the appeal in its entirety including the record, the submissions by the learned counsel, the law cited therein and the grounds. I will treat the three grounds as the issues. I identify them as follows.
- i. Whether it was improper to join the legal representatives in a case filed after the death of the deceased.
 - ii. Whether it was proper to join the legal representatives after the striking out of James Kamanda for incapacity.
 - iii. Whether the suit is a nullity for having been filed against a dead litigant hence dead in the water.
 - iv. Whether the suit was dead for lack of a legal representative at the time of its filing.
8. On the 1st issue, I find that it was proper to join the legal representatives of the deceased in the lower court suit. Under Section 79 of the *Law of Succession Act*, the property of the deceased vested in them. This means that they represent the deceased for all purposes of the grant. Since the deceased could not be sued, that is where his legal representatives come in. That is the reason why James Kamanda was disjoined from the suit. His argument then was that he was not the personal representatives of



the estate of the deceased. Had he been the personal representative, he would not have asked to be disjoined. Section 79 of the *Law of Succession Act* provides as follows.

“The executor or administrator to whom representation has been granted shall be the personal representative of the deceased for all purposes of that grant, and, subject to any limitation imposed by the grant, all the property of the deceased shall vest in him as personal representative.”

Section 82 of the same Act provides as follows.

“Personal representatives shall, subject only to any limitation imposed by the grant, have the following powers-

- a. To enforce, by suit or otherwise, all causes of action which, by virtue of any law, survive the deceased or arise out of his death for his estate;”

Since the personal representatives can sue on behalf of the estate, they surely can be sued on behalf of the estate of the deceased. Being personal representatives of the deceased for all purposes of the grant as provided in Section 79 includes the purposes of being sued like it is the case here. The deceased is being sued in connection with land that he left behind. This means that the cause of action survives him and it is his personal representatives who ought to be sued.

This joining of the personal representatives in is not to be confused with the appointment of a legal representative in a pending suit under Order 24 rules 2 and 3 of the Civil Procedure Rules. That is where there needs to have been a suit pending against the deceased.

This finding covers the second issue.

9. As for the third issue, I find that there was no dead litigant. There is no evidence or argument that either Arthur Hunja or Rose Waruguru or both of them are dead. That was not an issue in the lower court. It cannot be an issue on appeal.
10. Finally, on whether the suit was dead, I find that it was not. James Kamanda was not the only party in the suit. There were other parties who included the County Government of Murang'a and the Land Registrar Murang'a. The striking out of James Kamanda did not end the suit. It did not kill the suit. The suit continued against the remaining parties. The motion seeking to amend the suit and introduce the correct parties was properly grounded on Order 1 rule 10 of the Civil Procedure Rules. The learned trial magistrate did not make any error in allowing the motion dated 26-10-2023.
11. For the above stated reasons, I find no merit in the appeal herein. It goes without saying that the lower court suit will proceed with both Arthur Hunja Kamanda and Rose Waruguru as Defendants. Costs to the 1st Respondent.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT MURANG'A THIS 27^H DAY OF MAY 2025

M.N. GICHERU

JUDGE

Delivered online in the presence of__

Court Assistant – Mwangi Njonjo

Appellant's Counsel - Mr. Ndonga holding brief



Interested Party's Counsel –

1st Respondent's Counsel – Mr. Makira

2nd Respondent – Mr Kimwere

