



Njomo v Namuna & 2 others; Gichanga (Suing as the legal representative of the Estate of Abijah Wakarindi Njomo (Applicant) (Environment & Land Case E023 of 2023) [2025] KEELC 523 (KLR) (10 February 2025) (Ruling)

Neutral citation: [2025] KEELC 523 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KWALE
ENVIRONMENT & LAND CASE E023 OF 2023
LL NAIKUNI, J
FEBRUARY 10, 2025**

BETWEEN

ABIJAH WAKARINDI NJOMO PLAINTIFF

AND

BAKARI SUDI NAMUNA 1ST RESPONDENT

AHMD RAMADHANI ABDALLA 2ND RESPONDENT

CHIEF REGISTRAR KWALE 3RD RESPONDENT

AND

JUNE WANGARI GICHANGA (SUING AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF ABIJAH WAKARINDI NJOMO) APPLICANT

RULING

I. Introduction

1. The Honourable Court was tasked to make a determination of the Notice of Motion applications dated 5th September, 2024 by the Applicant - June Wangari Gichanga [Suing as the Legal representative of the estate of Abijah Wakarindi Njomo). It was brought under the provision of Order 1 Rule 14; Order 24 (1) & (3) of the Civil Procedure Rules, 2010; Order 51 Rules 2010; Sections 3A of the [Civil Procedure Act](#), Cap. 21.
2. Despite of the application having been served; it never elicited any responses. However, due to the potency of the matter, the Honourable Court shall proceed to deal with it on its own merit whatsoever.



II. The Applicant's case

3. The Applicant sought to be granted the following orders: -
 - a. Spent.
 - b. That the Plaintiff/Applicant Ms. Abijah Wakarindi Njomo be substituted with Ms June Wangari Gichanga being the holder of Grant of Letters of Administration Ad litem dated 29th July 2024 as issued in succession cause no E101 of 2024.
 - c. That the application dated 31st October 2023 be amended to enjoin the said June Wangari Gichanga as the Plaintiff/Applicant in this case
 - d. That costs of this application be in the cause.
4. The application was premised upon grounds, testimonial facts and averments made in the face of it and Paragraphed the supporting affidavit of June Wangari Gichanga, the Applicant herein together with one (1) annexures marked as "JWG – 1" Annexed herein. She averred as follows that: -
 - a. The Applicant is the daughter to the deceased Plaintiff/Applicant and one of the intended administrators of the Applicant's estate hence competent to swear this Affidavit.
 - b. The Plaintiff/Applicant in this suit is the legal and registered beneficial owner of the suit property Kwale/S. N/Kundutsi/ "A"/854 situated in Kwale measuring approximately 2.80 hectares or thereabouts (Hereinafter referred to as "The Suit Land") which property she was acquired and held in trust by her from the estate of her father Harrison Gichanga Njomo.
 - c. The Plaintiff and her husband Harrison Gichanga Njomo got married in Muranga on 9th February, 1974, later on on the 18th April, 1978 Harrison Gichanga Njomo was registered as the proprietor of all the suit land.
 - d. Mr. Harrison Gichanga Njomo passed on in November 1982 and later the Plaintiff applied for Grant Letters of Administration over the estate of her late husband which were granted on 13th June, 1986.
 - e. The Plaintiff begun the process of transferring the properties in trust over the estate of the deceased on 15th July, 2009. However, in August 2023 a search conducted at the Lands Registry established that the suit property had been transferred to an unknown person the 2nd Respondent herein.
 - f. The record indicated the 1st Respondent was fraudulently registered as the owner of the suit property on 28th May, 2029 over a Grant issued in Succession Cause no. 153 Of 2019.
 - g. Subsequently the Plaintiff filed this suit on 31st October, 2023 to challenge the fraudulent acquisition of her land and the same was pending hearing.
 - h. After perusal of the records held at the 3rd Respondent's offices, in order to substantiate how title was passed to Ahmed Ramadhan Abdalla, the records revealed that the 2nd Respondent acquired title to the land on the 10th of June 2019 from one Bakan Sudi Namuna ID No 0276973
 - i. The records also reflect that Bakari Sudi Namuna was registered as the proprietor of the land on the 28th of May 2019 by reason of a grant issued due in Succession Cause No 153 Of 2019



- j. The purported transfer of the suit property from the Plaintiff to the 1st Respondent herein was allegedly as a result of a Succession Cause No 153 of 2019 wherein the 1st Respondent herein fraudulently and in concealment of material facts feigned the death of the Plaintiff herein to start of the succession proceedings
- k. The Plaintiff/Applicant herein lodged a suit vide a plaint and a notice of motion application dated 31st October 2023 seeking an order declaring that the transfer of the suit property herein to the 1st Respondent was fraudulent, illegal and void and the said title be reverted back to the Plaintiff inter alia.
- l. The Plaintiff herein pending the hearing and determination of the said suit and application died intestate on 11th December 2023 before the matter at hand came to its logical conclusion
- m. The death of the Plaintiff had created a legal vacuum that needs to be filled to prevent injustice and allow the matter to proceed to its logical conclusion without undue delay.
- n. The legal representatives of the estate of the Plaintiff had taken out the Grant of Letters of Administration ad litem dated 29th July 2024 to allow them to substitute the Plaintiff herein and to litigate the suit on behalf of the estate.
- o. The Grant Letters of Administration was issued to M/s. June Wangari Gichanga who is the one of the deceased Applicant's daughters well versed with the matter in these proceedings. Annexed and marked as "JWG – 1" is a copy of the Limited Grant Ad Litem.
- p. It was necessary to substitute the deceased in the said application to allow continuity in the prosecution of the matter.
- q. She is apprehensive that should the prayers sought not be granted the matter will remain unlitigated and an injustice will continue to be perpetrated against the estate of the deceased.
- r. It will be in the interest of Justice that the orders sought were granted and as the Respondents shall suffer no prejudice whatsoever.

III. Submissions

- 5. The Honourable Court directed that the Notice of Motion application dated 5th September, 2024 be canvassed by the way of written submission. Unfortunately, by 6th February, 2025, the Honourable Court had not been able to access the written submission by any of the parties. However, the Honourable Court proceeded to pen down the Ruling on its own merit to be delivered on 7th February, 2025 by virtual means.

IV. Analysis & Determination

- 6. I have considered the application herein, the relevant provision of *the Constitution* of Kenya, 2010 and the Statutes. To arrive at an informed, fair and reasonable decision, the Honourable Court has framed three (3) issues for its determination. These are: -
 - a. What are the legal parameters for consideration for the Legal substitution?
 - b. Whether the Notice of Motion application dated 5th September, 2024 has any merit?
 - c. Who will bear the costs of the application?



Issue No. 1). What are the legal parameters for consideration for the Legal substitution?

7. Under this sub – title the main substratum is on the legal parameters to be considered for the legal substitution of parties upon death and whether the Applicant being the duly appointed Legal Representative of the Estate of the Deceased merits the prayers sought in the application.
8. The Law governing this aspect is under the provision of Order 24 of the Civil Procedure Rules, 2010. It outlines what ought to happen if a party or parties to a suit dies; Order 24, Rule 3 provides for procedure in case of death of one of several Plaintiffs or of sole Plaintiff as follows:

“(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 sub rule (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.

9. In the case of “Said Sweilem Gheithan Saanum – Versus - Commissioner of Lands (being sued through the Attorney General) & 5 Others (2015) eKLR, the Court of Appeal explained the provisions of Order 24 of the Civil Procedure as follows:

“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 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.”

Additionally, in the case of “Titus Kiragu – Versus - Jackson Mugo Mathai (2015) eKLR” it was held that:-

“It is not the act of the court declaring the suit as having abated that abates the suit but by operation of law.”



10. The provision of Order 24 Rule 7 provides for effect of abatement or dismissal of the suit as follows;

“7.

- (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”.

11. Guided by the above provisions of Order 24 Rule 7, this court is of the view that the Applicant ought to first have first sought for the revival of the suit since the suit had abated before seeking to be substituted. The above provisions of law provide in a mandatory nature a that a revival must first be sought before a substitution is done.

12. The Applicant ought to further establish to court sufficient cause as to the delay in substitution in order for the revival and substitution to be allowed. An order for substitution without a revival would be a nullity in law. See “Mbaya Nzulwa – Versus - Kenya Power & Lighting Co. Limited [2018] eKLR”, where the court held thus: -

“I hold the view that under the proviso to Rule 3 (2) the court has a discretion to extend time even where the application for substitution is not made within one year but an abated suit need revival under Rule 7 (2). The proper way to proceed is to seek in the same application for substitution that the suit which has abated be revived. That to me is what the applicant and counsel ought to have done here but they have not done. I will not seek to punish the Applicant and the beneficiaries to the estate for failure by delay as well as failure to seek revival of the suit. Rather I will adopt the courts duty to sustain claims for purposes of them being heard on the merits. I invite the intrinsic power of the court to administer justice devoid of technicalities as well as the overriding objective of the court and understand the applicant to plead that the suit be heard on the merits. I accede to that plea”.

Issue No.2). Whether the Notice of Motion application dated 5th September, 2024 has any merit?

13. Under this sub title, the Honourable Court will endeavour to apply the above legal principles to the instant case. In order to do that, it is imperative that a brief background of the matter be extrapolated herein. Initially, this suit was commenced in the year 2023 vide a Plaint dated 31st October, 2023. Accompanying the Plaint was a Certificate of Urgency and the Notice of Motion application of even date. These pleadings were placed before the Judge on 9th November, 2023. The court directed that the application be served and a hearing date taken at the registry.

14. The subject matter is the suit land which was allegedly transferred fraudulently to the 1st and 2nd Defendants/Respondents. From the record, although the summons dated 9th November, 2023 were issued against the Respondents there were proof of service in form of affidavit of service for the service of the summons upon the said Respondents.



15. On 22nd February, 2024 the Learned Counsel for the Plaintiff court was informed that the Plaintiff had passed on and prayed for time to substitute the deceased. Further, the Counsel stated that a succession cause was ongoing and the same was coming up before its respective court on 18th March, 2024. On 11th November, 2024 the file was again placed before the Judge. The court noted that the suit had not proceeded since its inception on 9th November, 2023 and ordered that a notice to show cause why the suit should not be dismissed be served upon the parties.
16. On 16th December, 2024 the Counsel for the Plaintiff informed court that efforts to trace the 1st and 2nd Defendants for service had proved futile. However, by this time an application to substitute the Plaintiff had been filed before this court. The Court slatted the application for substitution for hearing for on 23rd January, 2025. Indeed, it was set down for hearing and reserved for a ruling. That is adequate on facts.
17. Now turning to the issue of analysis. From the facts of this case, the deceased died intestate on 11th December, 2023. It is evident that the Applicant as the duly appointed Legal Representative of the Estate of the Deceased has sought for substitution of the Plaintiff vide an application dated 5th September, 2024. Clearly, from the records, the application appears to have been paid for through the Court Tracking System (CTS) on 8th January, 2025, though the Learned Counsel holds it was filed in September, 2024. If the Court was to go by the date of payment, then the suit ought to have abated. Further, the Applicant has only sought for substitution without revival of the suit and from the above holding of the Court, it is trite that the Applicant cannot be substituted in a suit that has abated without revival.
18. However, based on some good reason - taking that this a land matter with its sensitivities, according the Learned Counsel for the Plaintiff some benefit of doubt, and the interest of natural justice, Equity and Conscience, the Court will invoke its unfettered powers vested in it under the provision of Section 95 of the *Civil procedure Act*, Cap. 21; Order 50 Rules 6 and 7 of the Civil Procedure Rules, 2010; Section 101 of the *Land Registration Act*, No. 3 of 2012; Section 150 of the *Land Act*, No. 6 of 2012; Section 3 and 13 of the Environment & Land Court *Act, No. 19 of 2011*, extend the time and allow the application.

Issue No. c). Who will bear the costs of the application?

19. It is well established that the issue of costs is at the discretion of the Court. Costs mean the award that is granted to a party upon the conclusion of any legal action and proceedings. The provision of Section 27 (1) of the *Civil Procedure Act*, Cap. 21 holds that costs follow the events. By events it means the outcome and result of the legal action.
20. In the instant case as the application was allowed, the costs shall be in cause.

V. Conclusion & findings

21. Consequently, upon the in-depth analysis of the framed issues, the Honourable Court has arrived at the following orders: -
 - a. That the Notice of Motion application dated 5th September, 2024 be and hereby to be merited and hence allowed.
 - i. the Plaintiff/Applicant Ms. Abijah Wakarindi Njomo be substituted with Ms. June Wangari Gichanga being the holder of Grant of Letters of Administration Ad litem dated 29th July 2024 as issued in succession cause no E101 of 2024.



- ii. the application dated 31st October 2023 be amended to enjoin the said June Wangari Gichanga as the Plaintiff/Applicant in this case
- b. That the Plaintiff directed to amend the Plaint within the fourteen (14) days from this date.
- c. That the 1st, 2nd and 3rd Defendants to be served with all the pleadings and mention notice and an affidavit of service under the provision of Order 5 Rule 15 of the Civil Procedure Rules, 2010.
- d. That there be a mention on 3rd April, 2025 for Pre – Trial conference and a hearing of the matter to be on 1st July, 2025.
- e. That the Costs of the application to be in the cause.

It Is So Ordered Accordingly.

RULING DELIVERED THROUGH THE MICROSOFT TEAMS PLATFORM SIGNED AND DATED THIS 10TH DAY OF FEBRUARY 2025

HON. MR. JUSTICE L.L. NAIKUNI

ENVIRONMENT & LAND COURT AT KWALE

Ruling delivered in the presence of: -

Mr. Daniel Disii, the Court Assistant.

M/s. Agnes Ndungi Advocate holding brief for Mr. Hassan Advocate for the Applicant.

No appearance for the 1st & 2nd Defendants/Respondents.

