



Kagaari North FCS Limited v Evan (Sued as the Personal Representative of the Estate of Ibrahim Evan - Deceased) (Environment and Land Case 166 of 2017) [2025] KEELC 5908 (KLR) (3 June 2025) (Ruling)

Neutral citation: [2025] KEELC 5908 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT EMBU
ENVIRONMENT AND LAND CASE 166 OF 2017**

AK BOR, J

JUNE 3, 2025

BETWEEN

KAGAARI NORTH FCS LIMITED APPLICANT

AND

HELLEN NJOKI EVAN (SUED AS THE PERSONAL REPRESENTATIVE OF THE ESTATE OF IBRAHIM EVAN - DECEASED) RESPONDENT

RULING

1. Through the application dated 30/10/2024, the applicants seek to revive the suit against the respondent and to have the deceased respondent substitute by Hellen Njoki Evan who is said to be the legal representative of his estate. The application was made on the grounds that the respondent died on 7/5/2018 while this case was in court and that Hellen Njoki Evan was the administrator of his estate having been granted letters of administration in Embu Succession Cause No. E202 of 2023 on 21/8/2024.
2. It was urged that the cause of action survived the death of the respondent and that the delay in filing the application was occasioned by the difficulty in tracing the legal representative of the respondent because his family had not filed a succession cause from the time he died. It was urged that no prejudice would be suffered if the application were allowed and that it was in the interest of justice for the application to be allowed.
3. The applicant's manager and secretary swore the affidavit in support of the application and attached a copy of the grant of letters of administration issued to Helena Njoki Evan.
4. The application was not opposed. The applicant filed written submissions which the court has considered. It cited Order 24 rule 4 of the *Civil Procedure Rules* and reiterated that the cause of action survived the dead respondent and that the court has the discretion to revive a suit that has abated as



set out in Order 24 rule 7(2) of the [Civil Procedure Rules](#). It submitted that the delay in filing the application was adequately explained and urged the court to allow the application.

5. The issue for determination is whether the suit against the deceased respondent should be revived and whether Hellen Njoki Evan should be substituted in the suit in place of the deceased respondent.
6. The respondent died on 7/5/2018. Hellen Njoki Evan was appointed as the legal representative to his estate. The application to substitute the respondent was filed by the applicant on 3/4/2025. Order 24 rule 4 of the [Civil Procedure Rules](#) states that upon the death of a defendant and where the cause of action survives, an application should be made to cause the legal representative of the deceased defendant to be made a party to the suit. Order 24 Rule 4(3) provides that where within one year no application is made for substitution, the suit shall abate as against the dead defendant.
7. Since no application for substitution of the respondent was made within one year of his death, by operation of law, the suit against him abated on 7/5/2019.
8. A party seeking revival of an abated suit must first seek the extension of time where the time for doing so has lapsed. In [Rebecca Mijide Mungole & another v Kenya Power & Lighting Company Ltd & 2 others](#) [2017] KECA 544 (KLR) the Court of Appeal emphasized that once a suit abated, the cause of action was extinguished and could not be pursued in its original form. Additionally, that an application for extension of time must precede any request for revival or joinder of a deceased's legal representative to the suit.
9. The applicant did not seek the extension of time to revive the suit against the respondent, which renders the application defective.
10. The court declines to grant the orders sought in the application dated 30/10/2024.

DELIVERED VIRTUALLY AT EMBU THIS 3RD DAY OF JUNE 2025.

K. BOR

JUDGE

In the presence of: -

Diana Kemboi- Court Assistant

No appearance for the Applicant and the Respondent

