



REPUBLIC OF KENYA



Mutura & another v Njue & another; Njiru (Applicant) (Environment and Land Case 246 of 2015) [2025] KEELC 5889 (KLR) (7 July 2025) (Ruling)

Neutral citation: [2025] KEELC 5889 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT EMBU
ENVIRONMENT AND LAND CASE 246 OF 2015**

**AK BOR, J
JULY 7, 2025**

BETWEEN

NYAGA MUTURA 1ST PLAINTIFF

CHRISTOPHER KARIUKI GEOFFREY 2ND PLAINTIFF

AND

NAOMI CIOMWARI NJUE 1ST DEFENDANT

JAMES GICHOVI KAMAU 2ND DEFENDANT

AND

LILIAN RUGURU NJIRU APPLICANT

RULING

1. Lilian Ruguru Njiru filed the undated application on 30/1/2023 seeking leave to file the application for the substitution of the 1st plaintiff in the suit out of time. She also sought to have the court extend the time within which to apply to substitute the 1st plaintiff and for the costs of the application be in the cause.
2. The application was made on the grounds that the applicant is one of the administrators of the estate of the late Nyaga Mutura, who was the 1st plaintiff. The 1st plaintiff is said to have died on 29/1/2013 before the suit was concluded. The Applicant claimed that she was not aware of any pending case and that she learnt of this suit when the Covid 19 pandemic struck and the judiciary scaled down its services. She contended that the late Nyaga Mutura had a good case and the suit should be determined on merit to ensure that justice was done. She added that no prejudice will be suffered by the respondents if the orders sought are granted whereas she stood to suffer irreparably unless the application was allowed.
3. The application was opposed by the 2nd plaintiff through grounds of opposition dated 30/3/2023. The grounds raised were that the substitution of the late Nyaga Mutura who died on 29/1/2013 is



statute barred as the suit abated on 29/1/2014 in accordance with the law. The other ground was that the applicant had not reasonably explained or offered sufficient cause to warrant the court to exercise its discretion and extend time for the substitution. Additionally, that a similar application had been filed and disallowed by this court and that the application is bad in law, vexatious, frivolous and amounted to an abuse of the court process and should be struck out with costs.

4. The court directed parties to file and exchange written submissions which it has considered. The applicant mainly reiterated the grounds in the application and urged the court to allow the application.
5. The 2nd plaintiff cited Order 24 Rule 3 of the Civil Procedure Rules and submitted that since the 1st plaintiff died on 29/1/2013, the suit he had filed against the defendants had already abated and the present application was filed outside the statutory period. He contended that the applicant should have brought an application to revive the suit first and relied on Kenya Farmers' Cooperative Union Ltd v Charles Murgor (deceased) t/a Kiptabei Coffee Estate (2005) eKLR.
6. The issue for determination is whether the court should grant the orders sought by the applicant.
7. The court takes note of the fact that the applicant had previously filed a similar application dated 20/1/2021 seeking to substitute the late Nyaga Mutura in the suit. In its ruling, the court found that the suit filed by the 1st plaintiff had abated on 29/1/2014 a year after Nyaga Mutura died, and the applicant had not made any application to revive the suit. The current application suffers from the same defect in that even though the applicant seeks an extension of time to substitute the 1st plaintiff, she has once again failed to make an application to revive the abated suit. Without revival, no suit exists in which the applicant can be substituted, rendering the present application futile.
8. It is also apparent that the 2nd Plaintiff's suit against the defendants has equally abated since the defendants are both dead and have not been substituted. Strictly speaking, there is no suit before this court.
9. The application filed in court on 30/1/2023 is disallowed with no orders as to costs.

DELIVERED VIRTUALLY AT EMBU THIS 7TH DAY OF JULY 2025.

K. BOR

JUDGE

In the presence of: -

Ms. N. Mwinja holding brief for Mr. N. Ithigah for the 2nd Plaintiff

No appearance for the other parties

