



Mburu (Suing as the Personal Representative of the Estate of Karugu Guandai) v Waweru; Waweru (Plaintiff); Mburu (Suing as the Personal Representative of the Estate of Karugu Guandai) & 2 others (Defendant) (Environment & Land Case 186 of 2019) [2023] KEELC 16009 (KLR) (2 March 2023) (Ruling)

Neutral citation: [2023] KEELC 16009 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 186 OF 2019**

LN MBUGUA, J

MARCH 2, 2023

BETWEEN

MARY NJERI MBURU (SUING AS THE PERSONAL REPRESENTATIVE OF THE ESTATE OF KARUGU GUANDAI) PLAINTIFF

AND

BENSON WAWERU DEFENDANT

AND

BENSON WAWERU PLAINTIFF

AND

MARY NJERI MBURU (SUING AS THE PERSONAL REPRESENTATIVE OF THE ESTATE OF KARUGU GUANDAI) DEFENDANT

KENYA INDUSTRIAL ESTATES LIMITED DEFENDANT

NATIONAL BANK OF KENYA LIMITED DEFENDANT

RULING

1. The dispute herein relates to the property known as LR No 209/11470. The suit abated on February 5, 2022 as the defendant who is the Plaintiff by way of counterclaim passed away on February 5, 2021.
2. The application for determination before this court is dated January 24, 2023 brought by Mercy Nyokabi Waweru who describes herself as a daughter of the deceased Plaintiff in the counterclaim. She seeks orders to reinstate this suit and to extend the time for making an application for substitution of the Plaintiff by way of counterclaim with herself. The application is based on grounds on its face and on her supporting affidavit sworn on January 24, 2023.



3. She deposes that her late father was the allottee of the suit property which was purchased from the 2nd Defendant in the counterclaim in 1996 and he took possession upon purchase. The Plaintiff by way of original action had charged the suit property to the 3rd Defendant in the counterclaim.
4. She avers that by the time she was granted a limited grant of letters of Administration ad litem dated February 14, 2022, the suit had abated.
5. She deposes that the estate of the deceased ought to be granted their constitutional right to a fair hearing under Article 50 and Access to justice under Article 48 of the Constitution arguing that no prejudice would befall the Defendants which cannot be remedied by an award of costs.
6. The application is opposed by the 2nd Defendant in the counterclaim by way of grounds of opposition dated February 3, 2023, where it is contended that 10 years have gone by since the suit was filed yet there has been no progress in the matter. That the Plaintiff in the counterclaim passed on over 2 years ago and his estate failed to take out the grant of letters of administration intestate despite being aware of this suit. The application is not opposed by the other parties herein.
7. I have considered all the issues raised herein including the submissions of the applicant.
8. This suit abated by operation of the law as against the defendant in the main suit as well as the entire counterclaim on account of the death of that defendant on February 5, 2021. Order 24 Rule 7 of the Civil Procedure Rules provides that an abated suit may be revived if it is proved that the person applying for the revival was prevented from continuing with the suit by any sufficient cause.
9. The Applicant obtained a Limited Grant of Letters of Administration Ad Litem for purposes of prosecuting the suit on February 14, 2022, over a year after the Plaintiff in the Counterclaim died, while the current application was filed almost a year thereafter in January 2023.
10. Has the Applicant established sufficient cause for failing to continue with the suit after the death of the Plaintiff in the counterclaim? Sufficient cause was defined in Honorable Attorney General v the Law Society of Kenya & Another Civil Application No 133 of 2011 cited in Kishor Kumar Dhanji Varsani v Amolak Singh & 4 others [2016] eKLR as follows;

' Sufficient cause or good cause in law means: the burden placed on a litigant usually by court, rule or order to show why a request should be granted or an action excused. (See Black's Law Dictionary, 9th Edition page 521), sufficient cause must be rational, plausible, logical, convincing, reasonable and truthful. It should not therefore be an explanation that leaves doubt in the Judges mind. The explanation should not leave unexplained gaps in the sequence of events.'

11. The Applicant does not offer any explanation for the delay herein in that can be said to constitute sufficient cause. In Rebecca Mijide Mungole & another v Kenya Power & Lighting Company Ltd & 2 others [2017] eKLR, the court of Appeal held as follows after considering an application of similar nature where sufficient cause was not shown;

' We come to the conclusion that the delay was inordinate and no sufficient cause was shown.'

12. One of the cardinal principles in our Constitution is 'the expeditious delivery of justice' –see Article 159 (2) (b) of the Constitution of Kenya, which in effect codifies the 17th century maxim of 'Justice delayed is justice denied'. This means that if justice is not provided in a timely manner to the parties, it loses its importance and it violates the human rights of the litigants and their families.



13. In the final analysis, I find that the application dated January 24, 2023 is not merited. The same is hereby dismissed. Considering that the defendant in the main suit who is the plaintiff in the counter claim died February 5, 2021, then both suits (original claim and counterclaim) are hereby marked as abated - No orders as to costs.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 2ND DAY OF MARCH, 2023
THROUGH MICROSOFT TEAMS.**

LUCY N. MBUGUA

JUDGE

In the presence of:-

Waweru holding brief for Mr. Juma for the 2nd Defendant

Kahara holding brief for Mr. Muriithi for Defendant in originate suit

