



Opanda v Ondachi (Deceased); Bunyali (Intended Respondent) (the Legal Representative of the estate of Bunyali Ondachi) (Environment & Land Case 5 of 2021) [2023] KEELC 16194 (KLR) (9 March 2023) (Ruling)

Neutral citation: [2023] KEELC 16194 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT VIHIGA
ENVIRONMENT & LAND CASE 5 OF 2021
E ASATI, J
MARCH 9, 2023
(FORMERLY KAKAMEGA ELC NO. 208 OF 2021(O.S)
IN THE MATTER OF: THE LIMITATION OF ACTIONS ACT CAP 22 OF
THE LAWS OF KENYA
AND
IN THE MATTER OF: ASCERTAINMENT OF OWNERSHIP OF LAND
PARCEL NO. E BUNYORE/EBUSAMIA/269**

BETWEEN

JOSEPHAT AKHAYA OPANDA APPLICANT

AND

BUNYALI ONDACHI (DECEASED) RESPONDENT

AND

JOSEPHAT ONDACHI BUNYALI INTENDED RESPONDENT

THE LEGAL REPRESENTATIVE OF THE ESTATE OF BUNYALI ONDACHI

RULING

1. This ruling is in respect of the notice of motion application dated October 24, 2022 indicated to be brought pursuant to the provisions of order 24 rule 7 (2) of the *Civil Procedure Rules*. The application seeks for orders that:
 - i. The honourable court be pleased to revive the suit for hearing and determination on merit.



- ii. The respondent, Bunyali Ondachi be substituted with Josephat Ondachi Obunyali, the legal representative of the estate of Samson Bunyali Ondachi.
 - iii. The costs of the application be provided for.
2. The grounds upon which the application was brought as contained on the face of the notice of motion and the supporting affidavit of the applicant, Josephat Akhaya Opanda, were that the respondent died on August 5, 2020 during the pendency of this suit, that the intended respondent is the legal representative of the deceased respondent through limited grant of letters of administration *ad litem* issued on the March 18, 2021 through Vihiga Pmc Succ Cause No 88 of 2021 and that the applicant is committed to ensure continuity of the suit.
3. The application was unopposed. Affidavit of service on record shows that the intended respondent was served with the application.
4. I have considered the application in the light of the provisions of the law under which it is brought and the court record. I note that on December 7, 2021 at the instance of counsel for the plaintiff, the file was marked as closed as the suit against the deceased had abated. Order 24 rule 7 (2) allows the court to set aside an order of dismissal and to revive a suit which has otherwise abated, if it is proved that the applicant was prevented by any sufficient cause from continuing the suit. The applicant has explained the delay in the substitution process. The explanation is that he was trying to prosecute a citation against the dependants of the deceased respondent so as to get a personal representative to substitute the deceased. I find this explanation plausible. A copy of the citation in Vihiga Misc Succ cause No 14 of 2021 was attached to the application. I have perused the limited grant of letters of administration *ad litem* annexed to the application. It shows that the same was granted to Josephat Ondachi Obunyali to be the personal representative of Samson Bunyali Ondachi.
5. I am satisfied that the application is merited. The same is hereby allowed in the following terms.
 - a. The order marking the suit as closed is hereby reviewed and set aside and the suit revived for hearing and determination on merit.
 - b. The respondent Bunyali Ondachi is hereby substituted with Josephat Ondachi Obunyali
 - c. Costs to abide the main suit.

Orders accordingly.

RULING, DATED AND SIGNED AT VIHIGA AND READ VIRTUALLY THIS 9TH DAY OF MARCH, 2023 THROUGH MICROSOFT TEAMS ONLINE APPLICATION.

**E. ASATI,
JUDGE.**

In the presence of:

Ajevi Court Assistant.

Nafuye for the Plaintiff/Applicant

No appearance for the Defendant/Respondent

