



**Waweru (Suing as the legal representative of the Estate of Jecinta Njeri Magu) v Njoki & 3 others
(Environment & Land Case 279 of 2018) [2023] KEELC 17568 (KLR) (11 May 2023) (Ruling)**

Neutral citation: [2023] KEELC 17568 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 279 OF 2018**

**LN MBUGUA, J
MAY 11, 2023**

BETWEEN

**FRANCIS WAWERU (SUING AS THE LEGAL REPRESENTATIVE OF THE
ESTATE OF JECINTA NJERI MAGU) APPLICANT**

AND

**KARANJA MOHAMMED NJOKI 1ST RESPONDENT
SHADRACK NDUGIRE MUYA 2ND RESPONDENT
MARY WAMAITHA NDUGIRE 3RD RESPONDENT
EMBAKASI RANCHING COMPANY LIMITED 4TH RESPONDENT**

RULING

1. The Plaintiff herein; Jecinta Njeri Magu passed away on December 6, 2020. The suit abated by operation of law on December 6, 2021. Subsequently, the Applicant herein filed an application dated May 6, 2022 seeking to be substituted with the Plaintiff. By a ruling dated October 13, 2022, the said application was dismissed on grounds that the Applicant neither sought orders for revival of the suit nor extension of time for substitution.
2. The applicant has now filed the notice of motion application dated October 26, 2022 seeking orders for the revival of the suit and orders for extension of time for substitution of the Plaintiff. In the alternative, he seeks orders to set aside orders granted on October 13, 2022.
3. The application is based on grounds on its face and on the applicant's supporting affidavit sworn on October 26, 2022. He deposes that this suit abated in December 2021, a year after the Plaintiff's death as per the provisions of Order 24 Rule (3) (2) of the *Civil Procedure Rules*.
4. He further deposes that the delay in filing the relevant application was occasioned by the lengthy process involved in obtaining Grant of letters of Administration ad litem despite timely



commencement of the process on June 15, 2021. The said grant was issued on October 1, 2021, but he was not notified in good time. He also blames the covid 19 Pandemic and attendant challenges brought by the pandemic protocols.

5. The application is opposed by the 1st, 2nd and 3rd respondents vide the replying affidavit sworn on February 17, 2023 by the 2nd respondent. He deposes that the Applicant is guilty of delay and laches and has not given a substantive explanation as to why the suit should be revived and why the orders of the court given on October 13, 2022 should be set aside. He further deposes that the Application is *res-judicata*.
6. The application is also opposed by the 4th respondent vide an affidavit sworn on February 15, 2023 by its chairman one Walter Kigera Waireri. He deposes that the delay on the part of the Applicant was intentional and inordinate and since no reasonable ground for the delay has been advanced, the application should be dismissed.
7. I have duly considered all the arguments raised herein as well as the submissions of the plaintiff and those of the 1st – 3rd defendants. The issues falling for determination are;
 - a. Whether the application is *res judicata*.
 - b. Whether the applicant has established sufficient cause to warrant revival of this suit.
8. This suit abated on December 6, 2021. On May 6, 2022, the applicant herein filed an application to be substituted in place of the deceased plaintiff who passed away on December 6, 2020. The application was dismissed on October 13, 2022 primarily because there was no prayer for the revival of the suit. The respondents have argued that the suit is *res judicata*. In *Timothy Limo & 2 others v Joel Kinyanjui Muchiri (Suing as the legal representative of the late Jacob Muchiri Kinyanjui)* [2020] eKLR the Court stated that;

“The joinder of the personal representative is not the same matter as the revival of the abated suit....”.
9. Consequently, the current application is not *res judicata* as the court has jurisdiction to revive an abated suit even after an application for joinder has been determined.
10. Under Order 24 Rule 7 (2) of the *Civil Procedure Rules*, an abated suit may be revived if sufficient cause is established. A Limited Grant of Letters of Administration - ad litem of the plaintiff's estate was issued on October 1, 2021, before the suit abated. The record indicates that on October 14, 2021, Counsel for the plaintiff informed the court that the plaintiff had passed away and that they had already obtained a limited grant dated October 1, 2021. However, the plaintiff contends that he relocated to Nanyuki upon demise of his mother, that is why he was not in communication with his advocate. The explanation is rather feeble. Nevertheless, the applicant is making considerable efforts to come back to the seat of justice.
11. In the case of *Mwangi S. Kimenyi v Attorney General & another* [2014] eKLR, the court stated that;

“The decision whether a suit should be re-instated for trial is a matter of justice and it depends on the facts of the case”.
12. In the final analysis, I allow the application on condition that the applicant pays throw away costs of sh.45,000 to the 1st – 3rd respondents in total and sh. 15,000 to the 4th respondent within 21 days from the date of delivery of this ruling.



DATED, SIGNED AND DELIVERED AT NAIROBI THIS 11TH DAY OF MAY, 2023 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

In the presence of:-

Nyagaka Kambo holding brief for Gitonga Muriuki for 4th Respondent

Nyarango for Applicant

Kerubo holding brief for Wainaina for 1st – 3rd Respondent

Court assistant: Eddel

