



REPUBLIC OF KENYA



**KENYA LAW**  
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**Janira v Sifuna & another (Civil Appeal 16 of 2019)  
[2025] KEHC 7527 (KLR) (4 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 7527 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KITALE  
CIVIL APPEAL 16 OF 2019**

**RK LIMO, J**

**JUNE 4, 2025**

**BETWEEN**

**LENAH KAGEDI JANIRA ..... APPELLANT**

**AND**

**JACINTA SIFUNA ..... 1<sup>ST</sup> RESPONDENT**

**PETER SIFUNA ..... 2<sup>ND</sup> RESPONDENT**

*(An interlocutory appeal against the ruling delivered on 11/12/2018  
by Hon. Nyangara Oroso vide Kitale CMCC No.73 of 2011)*

**JUDGMENT**

1. This is an interlocutory appeal against the ruling delivered on 11/12/2018 by Hon. Nyangara Oroso vide Kitale CMCC No.73 of 2011.
2. In that suit, the initial plaintiff Hezron Janira Alunga passed on, on 12/4/2017 and the appellant, a daughter to the deceased applied on 22/11/2018 to revive the suit vide an application dated 21/11/2018. The main ground relied by the appellant was that she was unaware of the suit and was only alerted by a family friend when the suit had abated.
3. She then filed petition to obtain a limited grand (Ad Litem) upon which she filed the said application.
4. The trial court found that the explanation given for the inordinate delay was not sufficient or good enough and dismissed the same.
5. Aggrieved she filed this appeal raising the following grounds namely;
  - i. That the trial magistrate erred in declining to revive the suit yet sufficient cause had been shown under Order 24 Rule 7(2) of the Civil Procedure Rules.



- ii. That the trial court failed to exercise its discretion judiciously.
  - iii. That the trial court erred by rejecting the reasons given for the delay.
  - iv. That the trial court erred by failing to note that the deceased plaintiff had testified and his evidence was on record.
  - v. That the application to revive suit was not challenged by the respondent.
  - vi. That the trial court erred by finding that reviving the suit would prolong litigation yet the same was for the benefit of the estate of the deceased.
6. In her written submissions done through counsel M/s Walter Wanyonyi & Co Advocates, the appellant maintains that the delay in filing the application to revive the suit was not inordinate. According to her, she showed or demonstrated sufficient cause for the suit to be revived. The appellant faults the approach taken by the trial court in exercising its discretion submitting that it took a strict approach which resulted to injustice to the appellant.
  7. The appellant submits that the trial court ignored the attempts made by her advocate to trace the family after the demise of the plaintiff. She submits that the link used by the advocate to get her was not a party to the suit.
  8. The appellant submits that the deceased plaintiff had already testified which showed that he was interested in pursuing the cause. She contends that she had to follow the procedure of getting a grant before taking over the suit. According to her the delay was not inordinate.
  9. The respondent has opposed this appeal vide written submissions by learned counsel M/S Mukabane Kagunza & Co Advocates dated 3/4/2025.
  10. The respondent contends that the appellant's application dated 21/11/2018 was unmerited because of failure by the applicant to seek extension of time to seek substitution of the deceased plaintiff as provided under Order 24 Rule 3(1) of the Civil Procedure Rules. The respondent reasons that before one seeks for revival one has to seek for extension of time to substitute a deceased plaintiff. He relies on the case of Rebecca Mijide Mungole & Anor v Kenya Power & Lighting Co Ltd (Civil Appeal No.283 of 2025(NAI), where the Court of Appeal found that it is incompetent to seek joinder or revival when prayer for extension of time to apply has not been granted.
  11. The respondent further submits that while the provisions of Order 24 Rule 7(2) gives a court discretion to revive a suit that has abated, an applicant must provide sufficient cause to continue the suit. He submits that the appellant failed to demonstrate good cause and that the trial court exercised its discretion well by finding no merit in the application. He relies on the case of Soni v Mohan Dairy [1968]EA 58 where the court held that a party seeking to revive a suit should show good reasons on what prevented him from substituting the deceased plaintiff within the requisite period.
  12. The respondent also contends that an applicant seeking revival of a suit has the burden to show why her inaction should be excused. According to the respondent, the reason given by the appellant was not sufficient since the link who gave them the information could as well have given them the information on time.
  13. This court has laid out the appellant's case and the response made by the respondent. This is a first appellate court and the role of this court is to reassess the evidence placed before the trial court and draw own conclusion on whether the trial court exercised its discretion well.



14. This appeal raises one issue and the same relates to an exercise of discretion by the trial court. The trial court was dealing with an application dated 21/11/2018 by the appellant. The said application sought the following order;

“This court be pleased to order for revival of this suit and thereupon substitute the deceased plaintiff with one Leah Kagedi Janira”.

The applicant, invoked the provisions of Order 1A, 1B & 3A of *Civil Procedure Act* and Order 24 Rules 3(1), 7(1) (2) and Order 51(1) of the Civil Procedure Rules. Of relevance in this matter is the provisions of Order 24 Rule (1) (3) & (7) of the Civil Procedure Rules.

Order 24 Rule 1 provides as follows;

1. “The death of a plaintiff or defendant shall not cause the suit to abate if the cause of action survives or continues”

Order 24 Rule 3 (2) provides as follows;

3(2) “where within one year no application is made under subrule (1), the suit shall abate so far as the deceased plaintiff is concerned, and, on the application of the defendant, the court may award to him the costs which he may have incurred in defending the suit to be recovered from the estate of the deceased plaintiff”.

Order 24 Rule 7 provides;

7(1) “where a suit abates or is dismissed under this Order, no fresh suit shall be brought on the same cause of action”.

15. Flowing from the above cited Rules, it is clear that the death of a party to a suit does not cause the suit to abate. The cause action can survive him or her.
16. The procedure for substitution of a deceased plaintiff is well spelt under Rule 3 and Rule 3(2) provides that if substitution is not sought within one year of the demise of a party the suit abates. However a window for extension of time is granted where one shows a good cause to extend time.
17. Rule 7(2) provides that even when after abatement of a suit a legal representative can apply to court for the revival of suit but must show that he was prevented by a good cause from continuing the cause.
18. The above rules reveals two crucial elements that must be demonstrated by an applicant to be able to pursue a suit that has abated by operation of Order 24 Rule 3(2) of the Civil Procedure Rules.
19. The first element is provided under Order 24 Rule 3(2) of the Civil Procedure Rules. An applicant must show good reasons for extension of time to substitute a deceased plaintiff or a party to the suit.
20. The 2<sup>nd</sup> element is provided under Order 24 Rule 7(2). An applicant must demonstrate that he was prevented by sufficient cause from continuing with the suit as a result of which the suit abated. The court can then exercise its discretion to revive the same.
21. The respondent has raised a significant issue which is the legal requirement that the prayers for extension and revival must be sequential that is the application for extension must be followed by revival.

I have looked at the cited authority from the Court of Appeal in *Rebeca Mijide Mungole & Cleophas Organ Omwenga v Kenya Power & Lighting Company Ltd & Anor* (Supra). The Court of Appeal was quite candid on the need for the sequential reliefs.



22. The court reasoned that “it is the effluxion of time that causes the suit to abate” and it is that time that must first be extended or enlarged and once enlargement of time is done then a legal representative can apply to be enjoined in the proceedings and it is only after the legal representative has joined that he can then apply to revive the suit.
23. Flowing from the above it is clear that the appellant sort of put the cart before the horse. She applied to have the suit revived before applying for extension of time to be enjoined in the suit. So while she may have shown reasons explaining what prevented her from reviving the suit, she did not seek for extension of time or show sufficient cause for extension of time for joinder. She instead sought for revival then joinder. A clear case of placing a cart before the horse. This court is bound by the cited decision of the Court of Appeal that found the same to be incompetent. It is for that reason that I find this appeal unsustainable. The same is dismissed with costs.

**DELIVERED, DATED AND SIGNED AT KITALE THIS 4TH DAY OF JUN, 2025.**

**HON JUSTICE R.K. LIMO**

**KITALE HIGH COURT**

Judgment delivered in open court

In the presence of;

Wanyonyi for the Appellant

Mukabane for Respondent

Duke/Chemosop- Court Assistants

