



Rono & 3 others (Suing as the Personal Representatives of the Estate of Chumo Arap Chabas alias Chumo Chebas - Deceased) v Langat & another (Environment & Land Case 40 of 2017) [2025] KEELC 3797 (KLR) (13 May 2025) (Ruling)

Neutral citation: [2025] KEELC 3797 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KERICHO
ENVIRONMENT & LAND CASE 40 OF 2017**

LA OMOLLO, J

MAY 13, 2025

BETWEEN

**WILLY KIPKURUI RONO 1ST PLAINTIFF
JOHN KIPKEMOI CHEBAS 2ND PLAINTIFF
WILLIAM KIPTERER BII 3RD PLAINTIFF
PAUL KIPTONUI NGENO 4TH PLAINTIFF
SUING AS THE PERSONAL REPRESENTATIVES OF THE ESTATE OF
CHUMO ARAP CHABAS ALIAS CHUMO CHEBAS - DECEASED**

AND

**JOEL KIMETET LANGAT 1ST DEFENDANT
SARAH KAPTICH 2ND DEFENDANT**

*((Suing as the personal representatives of the estate of
Chumo Arap Chabas Alias Chumo Chebas - deceased))*

RULING

Introduction.

1. This ruling is in respect of the Plaintiffs/Applicants Notice of Motion application dated 14th May, 2024. The application is expressed to be brought under Order 24 Rule 4 & 7 (2), Order 51 Rule 1 of the *Civil Procedure Rules* and Sections 1A & 1B of the *Civil Procedure Act*.
2. The application seeks the following orders;



- a. That this Honourable Court be pleased to grant leave to the Applicants to revive the suit against the Defendants.
 - b. That the Court be pleased to extend time to substitute the deceased Defendants.
 - c. That this Honourable Court do cause the legal representatives of the deceased Defendant Joel Kimetet Langat (Deceased) namely Naomi Chepkorir Langat to be substituted and be made a party in this suit in place of the Defendant and proceed with this suit on his behalf.
 - d. That such other and/or further directions be given by this Honourable Court to meet the ends of justice.
 - e. That the costs of this application be in the cause.
3. The application is based on the grounds on its face and the supporting affidavit sworn by one Paul Kiptonui Ngeno on 14th May, 2024.

Factual Background.

4. The Plaintiffs/Applicants commenced the present proceedings vide the Plaint dated 10th April, 2017. The Plaint was amended on 30th June, 2017. The Plaintiffs/Applicants seek the following prayers;
- a. An eviction order against the Defendants by themselves, agents, servants or employees or any other party acting on their behalf to vacate Plot No. 7 Kapkurgwet Market.
 - b. An order of permanent injunction restraining the Defendants by themselves, agents, servants, employees or any other party through whom they may be acting from interfering with, trespassing onto, subdividing, selling, transferring, assigning, fencing, erecting structures thereon and or doing any other act which is prejudicial to the Plaintiff's proprietary interest in Plot No. 7 Kapkurgwet Market.
 - c. Costs and interest.
 - d. Any other relief the Court may deem fit and just to grant.
5. The 2nd Defendant/Respondent filed her Statement of Defence and Counterclaim dated 24th August, 2018. In her Counterclaim she seeks the following orders;
- a. That this Honourable Court do find and declare that the 2nd Defendant has a right of ownership by prescription of half portion of the plot number 7 at Kapkurgwet market measuring 25" by 100".
 - b. That the Plaintiffs' suit against the 2nd Defendant be dismissed with costs to the 2nd Defendant and judgement be entered on the Counterclaim as prayed.
 - c. That any such other or further relief as this Honourable Court may deem appropriate to be made.
6. The court record does not contain a statement of Defence filed by the 1st Defendant/Respondent.
7. The application under consideration first came up for hearing on 19th June, 2024 but the hearing did not proceed because counsel for the Plaintiffs/Applicants was bereaved.
8. The application was rescheduled for hearing on 15th July, 2024 and further rescheduled to 30th September, 2024 for the reason that Mr. Lang'at requested time to enter appearance for both Defendants/Respondents.



9. On 30th September, 2024 the Court issued directions that the application be canvassed by way of written submissions. The matter was mentioned for submissions on 30th October, 2024 and on 5th December, 2024 it was reserved for ruling.

The Plaintiffs/Applicants Contention.

10. The affidavit in support of the application is sworn by Paul Kiptonui Ngeno the 4th Plaintiff/Applicant.
11. He contends that this suit was pending when the 1st Defendant/Respondent died. He adds that the course of action survives.
12. He also contends that the 1st Defendant/Respondent died on 17th July, 2020 and the suit abated one year after his death for failure to substitute.
13. He further contends that on 17th October, 2023 he was granted leave to file and indeed filed a citation against the surviving beneficiaries of the estate of the 1st Defendant/Respondent.
14. It is his contention that the citees instructed an advocate who entered appearance and informed the Court that the estate of the deceased had appointed a legal representative who had been issued with a grant of letters of administration.
15. It is also his contention that he was prevented from continuing with the present suit due to the lax and clandestine manner the persons who were to take out Letters of Administration of the deceased maneuvered which forced him to file a citation application.
16. It is further his contention that he has proffered sufficient cause for the reviving of the suit and substitution of the 1st Defendant/Respondent.
17. He ends his deposition by stating that the intended 1st Defendant who is the legal representative of the estate of the deceased 1st Defendant/Respondent was not willing to file an application for substitution in order to delay this matter and occasion him loss and damage.

The 1st Defendant/Respondent's Response.

18. The 1st Defendant/Respondent filed Grounds of Opposition dated 27th August, 2024. They are as follows;
- a. That the application offends the provisions of Order 24 Rule 4(3) of the [Civil Procedure Rules, 2010](#) which prescribes that an application of this nature be filed within one year.
 - b. That the 1st Defendant died on the 17th July, 2020, this application ought to have been filed by 17th July, 2021 and that the Applicant obtained Grant of Letters of Administration on the 11th July, 2023, and the delay in filing the application on the 14th May, 2024 is untenable, unreasonable and inordinate. (sic)
 - c. That in any event even if the Applicant sought leave on the 17th October, 2023 the said one-year period had lapsed.
 - d. That the Applicants have also not demonstrated that they were prevented by any sufficient cause from continuing the suit, to warrant grant of the orders sought.
 - e. That in the premise, the Notice of Motion is fatally defective, misconceived, frivolous, vexatious and constitutes a fragrant abuse of the Court process thus ought to be dismissed with costs.



Issues for Determination.

19. The Plaintiffs/Applicants filed their submissions on 12th November, 2024 while the 1st Defendant/Respondent's submissions were filed on 31st October, 2024.
20. The Plaintiffs/Applicants submit on whether they are entitled to the prayers sought in the application.
21. The Plaintiffs/Applicants rely on Order 24 Rule 4(3) & Order 24 Rule 7 (2) of the Civil Procedure Rules and submit that the 1st Defendant/Respondent died on 17th July, 2020 and the suit abated on 17th July, 2021.
22. The Plaintiffs/Applicants also submit that the suit abated for reasons that were beyond their control as the beneficiaries of the estate of the deceased 1st Defendant/Respondent informed them that they were intending to willingly obtain a grant of Letters of Administration.
23. The Plaintiffs/Applicants further submit that when they noticed that the said beneficiaries were not following through, the 4th Plaintiff/Applicant sought and was granted leave to file a citation against the surviving beneficiaries of the Defendant.
24. The Plaintiffs/Applicants reiterate that they were later informed that Naomi Chepkorir Langat had been appointed the legal representative of the estate of the deceased 1st Defendant/Respondent.
25. The Plaintiffs/Applicants submit that the appointment of the said Legal Representative was brought to their attention on 24th April, 2024 even though the grant was issued on 11th July, 2023.
26. The Plaintiffs/Applicant urge the Court to find that the delay in the substitution was occasioned by reasons beyond their control.
27. The Plaintiffs/Applicants rely on Order 24 Rule 7(1) of the Civil Procedure Act, the judicial decision of *Patel vs East Africa Cargo Handling Services* (Civil Appeal No. 268/2017) and urge the Court to exercise its discretion and in the interest of justice allow the application as prayed.
28. The 1st Defendant/Respondent submits on the following issues;
 - a. Whether the application offends the provisions of Order 24 Rule 4(3) of the Civil Procedure. (sic)
 - b. Whether the Applicants are entitled to the orders sought.
29. The 1st Defendant/Respondent relies on Order 24 Rule 4(3) of the Civil Procedure Rules, the judicial decisions of *Titus Kiragu vs Jackson Mugo Mathai* [2015] eKLR, *Aggrey Swaka Waswa v Patrick Omonge Khaemba; Thomas Meshack Omonge & 3 others (Proposed Respondents)* [2020] eKLR, *Kenya Farmers Co-Operative Union Limited V Charles Murgor (Deceased) T/A Kaptabei Coffee Estate* [2005] eKLR and submits that it is not disputed that the 1st Defendant/Respondent died on 17th July, 2020. It is also not disputed that the suit abated on 17th July, 2021 by operation of the law and therefore there is no suit pending before this Court.
30. It is the 1st Defendant/Respondent's submissions that even if the Court were to try and exercise its discretion as provided for under Order 24 Rule 3(2) of the Civil Procedure Rules, the Plaintiffs/Applicants have not given any plausible reason for the Court to exercise its discretion.
31. With regard to the second issue, the 1st Defendant/Respondent reiterates that the suit has abated, it has been four years since the 1st Defendant/Respondent died and that the Plaintiffs/Applicants have not established a sufficient cause to warrant the revival of the suit.



32. The 1st Defendant/Respondent relies on the judicial decisions of *Attorney General v Law Society of Kenya & another* [2013] eKLR, *Kishor Kumar Dhanji Varsani v Amolak Singh & 4 others* [2016] eKLR, *Said Sweilem Gheithan Saanum v Commissioner of Lands (being sued through Attorney General) & 5 others* [2015] eKLR as was cited in *Timoi Farms & Estate Limited v Kipngeno Arap Ngeny & another* [2022] eKLR, *Cosmas Kanja Mbuteti (Deceased) & another v Jackson Murage & 3 others* [2021] eKLR in support of his submissions and urges the Court to dismiss the Plaintiffs/Applicants application.

Analysis and Determination.

33. I have considered the Plaintiffs/Applicants application, the response thereto and the rival submissions filed.
34. It is my view that the following issues arise for determination;
- a. Whether time should be extended for the substitution of the 1st Defendant/Respondent.
 - b. Whether the Plaintiffs/Applicants should be granted leave to revive the suit.
 - c. Whether Naomi Chepkorir Langat should be substituted in place of Joel Kimetet Langat the deceased 1st Defendant.
 - d. Who should bear costs of the application.

A. Whether time should be extended for the substitution of the 1st Defendant/Respondent.

35. The Plaintiffs/Applicants are seeking that time be extended for the substitution of the 1st Defendant/Respondent.
36. The 1st Defendant/Respondent did not specifically address this issue in the submissions filed.
37. In the judicial decision of *Ngotho Commercial Agencies v David Kiprono Sambai & 3 others* [2021] eKLR the Court held as follows;

“ 13. I am in agreement with the Applicant that it is correct to seek all the three prayers: the extension of time for substitution, revival of the abated suit and substitution of the 1st Defendant with that of the Applicant as in the instant application.

14. It is also my opinion that Order 24 Rule 4 that deals with the substitution of a Defendant who has died does not provide for an application for extension of time as in the case of an application to substitute a Plaintiff where the suit has abated.” [Emphasis Mine]

38. As was held in the above cited judicial decision, an application for extension of time is only made in applications for substitution of a deceased Plaintiff and not a deceased Defendant as is in this case.
39. Consequently, it was not necessary for the Plaintiffs/Applicants to seek extension of time to substitute the 1st Defendant/Respondent.

B. Whether the Plaintiffs/Applicants should be granted leave to revive the suit.



40. Order 24 Rule 4 of the *Civil Procedure* provides as follows;

- “(1) Where one of two or more Defendants dies and the cause of action does not survive or continue against the surviving Defendant or Defendants alone, or a sole Defendant or sole surviving Defendant dies and the cause of action survives or continues, the Court, on an application made in that behalf, shall cause the Legal Representative of the deceased Defendant to be made a party and shall proceed with the suit.
- (2) Any person so made a party may make any defence appropriate to his character as Legal Representative of the deceased Defendant.
- (3) Where within one year no application is made under subrule (1), the suit shall abate as against the deceased Defendant.”

41. The Plaintiffs/Applicants are seeking for leave to revive the suit as against the Defendants/ Respondents.

42. This Court notes that even though the Plaintiffs/Applicants are seeking for leave to revive the suit as against the Defendants/Respondents, they are only seeking that the 1st Defendant/Respondent be substituted.

43. It is not disputed that the 1st Defendant/Respondent died on 17th July, 2020. It is also not disputed that since the 1st Defendant/Respondent was not substituted within one year, the suit against him abated.

44. Order 24 Rule 7 (2) of the *Civil Procedure Rules* provides as follows on the procedure for revival of an abated suit;

- “(2) The Plaintiff or the person claiming to be the Legal Representative of a deceased Plaintiff or the trustee or official receiver in the case of a bankrupt Plaintiff may apply for an order to revive a suit which has abated or to set aside an order of dismissal; and, if it is proved that he was prevented by any sufficient cause from continuing the suit, the Court shall revive the suit or set aside such dismissal upon such terms as to costs or otherwise as it thinks fit.”

45. In the judicial decision of *Silas Njeru Njiru & 2 others v Mugo Mukere; Leonard Njeru Mukera & another (Intended Defendants/Respondents)* [2022] eKLR the Court held as follows;

- “31. From the Provisions of Order 24 rule 7(2) of the *Civil Procedure Rules* cited above it is provided that an application for revival of suit can be allowed if the Applicant shows that he was prevented by a sufficient cause from continuing the suit.

What is sufficient cause was defined in the Court of Appeal in the case of *The Hon. Attorney General v the Law Society of Kenya & Another* Civil Appeal (Application) No. 133 of 2011

“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 251. Sufficient cause must therefore be rational, plausible, logical, convincing, reasonable and truthful. It should not be an



explanation that leaves doubt in a Judges mind. The explanation should not leave unexplained gaps in the sequence of events”.

46. For the Court to exercise its discretion and revive the suit as against the 1st Defendant/Respondent, the Plaintiffs/Applicants must demonstrate that they were prevented by a sufficient cause to substitute.
47. The Plaintiffs/Applicants submit that once the 1st Defendant/Respondent died they got in touch with his family members who indicated that they would be obtaining grant of

Letters of Administration.

48. The Plaintiffs/Applicants also submit that they trusted their word and when they noticed the delay, they filed citation proceedings.
49. The Plaintiffs/Applicants further submit that it was during the citation proceedings that they were informed that the estate of the deceased had appointed a Legal Representative.
50. It is the Plaintiffs/Applicants submissions that this was brought to their attention on 24th April, 2024 and they filed the application under consideration soon after.
51. The 1st Defendant/Respondent in response contends that the Plaintiffs/Applicants have not established a sufficient cause to warrant revival of the suit as it has been four years since the deceased died.
52. The Plaintiffs/Applicants have attached to their affidavit in support of the application copies of the pleadings filed in Kericho CM Citation Cause No. E039 of 2024. The Citor is Paul Kiptonui Ngeno while the Citees are Cheron Langat, Chepkemoi Langat, Chepkirui Langat, Chebet Langat, Lionel Kiplangat Metet, Cheruto Langat and Chepngetich Langat.
53. Among the pleadings attached is a Notice of Appointment of Advocates filed by the Citees and it is dated 24th April, 2024.
54. The Plaintiffs/Applicants have also attached a copy of Letters of Administration Intestate issued in the Kericho HC Succession Cause No. E012 of 2023 In the matter of the Estate of the late Joel Kimetet Arap Langat issued to Naomi Chepkorir Langat.
55. It is my view that the Plaintiffs/Applicants have established sufficient cause for revival of the suit as they have demonstrated that they cited the family of the 1st Defendant/Respondent and it was during the citation proceedings that they became aware that a legal representative for his estate had been appointed.
56. In the interest of justice, this court is minded to exercise its discretion in favour of the Plaintiffs/Applicants and in so doing revive the suit as against the 1st Defendant/Respondent.

C. Whether Naomi Chepkorir Langat should be substituted in place of Joel Kimetet Langat the deceased 1st Defendant.

57. As stated in the preceding paragraphs, the Plaintiffs/Applicants have attached a copy of Letters of Administration Intestate issued in the Kericho HC Succession Cause No. E012 of 2023 –
In the matter of the Estate of the late Joel Kimetet Arap Langat issued to Naomi Chepkorir Langat to their affidavit in support of the application.
58. Naomi Chepkorir Langat is the legal representative of the estate of Joel Kimetet Arap Langat the deceased 1st Defendant/Respondent. Nothing is easier than to grant the order for substitution.



Disposition.

59. The upshot of the foregoing is that Plaintiffs/Applicants application dated 14th May, 2024 is merited and is allowed in the following terms:

- a. Leave is hereby granted to the Plaintiffs/Applicants to revive the suit as against the 1st Defendant/Respondent.
- b. Naomi Chepkorir Langat is hereby substituted as the 1st Defendant in place of Joel Kimetet Langat (Deceased).
- c. Costs of the application shall be in the cause.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAKURU THIS 13TH DAY OF MAY, 2025.

L. A. OMOLLO

JUDGE.

