



**Orwaru v Kitutu Chache North Constituency Development Fund Board & 2 others
(Environment & Land Petition 4 of 2017) [2025] KEELC 3812 (KLR) (14 May 2025) (Ruling)**

Neutral citation: [2025] KEELC 3812 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISII
ENVIRONMENT & LAND PETITION 4 OF 2017**

M SILA, J

MAY 14, 2025

BETWEEN

ONGARO ORWARU PETITIONER

AND

**KITUTU CHACHE NORTH CONSTITUENCY DEVELOPMENT FUND
BOARD 1ST RESPONDENT**

THE KISII COUNTY GOVERNMENT 2ND RESPONDENT

**THE BOARD OF MANAGEMENT SIEKA (DISPENSARY) HEALTH
CENTRE 3RD RESPONDENT**

RULING

(Application for substitution of deceased petitioner; application allowed)

1. The application before me is that dated 10 August 2023. It seeks orders to substitute the deceased petitioner with his legal representative, one Patrick Nyougo Ongaro. I see from the annexed Certificate of Death that the petitioner died on 27 June 2022. In the supporting affidavit, sworn by the said Patrick Nyougo Ongaro, it is averred that the petition for a grant of letters of administration was filed in October 2022 vide Kisii CMCC Succession Cause No. E418 of 2022 and the grant of letters of administration was issued on 3 August 2023. The applicant seeks the orders of substitution so that he can continue this suit.
2. I observe that the suit itself was filed on 4 April 2017 through a Constitutional Petition. The now deceased petitioner claimed to be the registered owner of the land parcel West Kitutu/Mwakibagendi/3240 and he contended that the respondents have constructed a health facility therein without regard to his rights. He inter alia sought orders for a declaration that his right to property has been infringed, a permanent injunction to restrain the respondents from the suit property, damages and mesne profits.



3. The 2nd respondent has opposed the application by filing Grounds of Opposition. It is contended that the suit has abated pursuant to Order 24 Rule 3 of the Civil Procedure Rules, 2010 and enlargement of time has not been sought for revival of the suit. It is further averred that there is no basis for the favorable exercise of discretion in favour of the applicant. In his submissions, counsel for the applicant urged that the delay is explained and that the applicant made all efforts to seek letters of administration. Counsel for the 2nd respondent urged that the suit has abated and asked the court not to allow the application.
4. I have considered all the above.
5. This is an application for substitution of the deceased petitioner and Order 24 Rule 1 applies. It provides as follows :
 - (1) Where one of two or more plaintiffs dies and the cause of action does not survive or continue to the surviving plaintiff or plaintiffs alone, or a sole plaintiff or sole surviving plaintiff 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 plaintiff to be made a party and shall proceed with the suit.
 - (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:

Provided the court may, for good reason on application, extend the time.
6. From the foregoing, it will be seen, particularly at subrule (2), that an application for substitution needs to be made within one year of death otherwise the suit shall abate. The proviso however gives the court discretion to extend time if good reason is given.
7. In our case, it is true as pointed out by counsel for the respondent, that the suit has actually abated, as the petitioner died on 27 June 2022 and the application herein was filed on 22 August 2023, which was more than one year after death. The question is whether good reason has been provided to allow the court extend time and revive the abated suit.
8. I see from the supporting affidavit that the petition for grant of letters of administration was filed in 2022 and the grant issued on 3 August 2023. It is a full grant of letters of administration and not an ad litem grant that is limited for purposes of pursuing the suit. It is not very clear why the applicant did not pursue an ad litem grant which would have been quicker as he awaits issuance of a full grant. I am however persuaded that he took reasonable steps to obtain the grant and I am thus persuaded to exercise my discretion to extend time and allow revival of the abated suit. With the revival of the abated suit, and given that the applicant has demonstrated that he is the legal representative of the deceased petitioner, I allow the application for substitution. The applicant may substitute the deceased petitioner and proceed to prosecute this suit. An amended petition may be filed within 14 days from the date hereof to reflect the substitution.
9. I make no orders as to costs.
10. Orders accordingly.

DATED AND DELIVERED THIS 14 DAY OF MAY 2025

JUSTICE MUNYAO SILA



JUDGE, ENVIRONMENT AND LAND COURT

AT KISII

Delivered in the presence of :

Ms. Wanjiku h/b for Mr. Kariuki for the petitioner/applicant

Ms. Nyaega for the 2nd & 3rd respondent

No appearance entered for the 1st respondent - Absent

Court Assistant – Michael Oyuko

