



REPUBLIC OF KENYA



KENYA LAW
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Kairebi v Municipal Council of Nyeri; Kairebi (Applicant) (Civil Appeal 80 of 2014) [2023] KEHC 3527 (KLR) (20 April 2023) (Ruling)

Neutral citation: [2023] KEHC 3527 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
CIVIL APPEAL 80 OF 2014
FN MUCHEMI, J
APRIL 20, 2023**

BETWEEN

JOHN WACHIRA KAIREBI APPELLANT

AND

MUNICIPAL COUNCIL OF NYERI RESPONDENT

AND

TERESIA NJERI KAIREBI APPLICANT

RULING

Brief facts

1. The application for determination dated 2nd September 2022 brought under Order 24 Rule 3 and 7 of the *Civil Procedure Rules* seeks for orders of substituting the appellant with the administrator of his estate who is none other but herself. The applicant further seek for orders of reinstatement of the appeal which had been declared abated.
2. The respondent filed Grounds of Opposition dated 24th November 2022 in opposition to the application.

The Applicant's Case

3. The applicant states that the appellant died on 8th February 2019 and she obtained a limited grant of letters of administration ad litem to his estate on 5th July 2022. It is further stated that by operation of the law, the appeal abated one year after the death of the appellant and therefore prays that the court substitute her with the appellant to enable her proceed with the appeal as the cause of action survives the deceased.



The Respondent's Case

4. The respondent contends that the application is misconceived, incompetent, bad in law, an abuse of the due process of the court and is incurably defective.
5. Parties disposed of the application by way of written submissions.

The Applicant's Submissions

6. The applicant reiterates the contents of her affidavit and relies on Order 24 Rule 3 and 7 of the *Civil Procedure Rules* and the case of *Sarah Kobilu Chebu & another v David K. Chesang* [2019] eKLR and submits that she has met the threshold of been substituted in place of the appellant. The applicant contends that she obtained legal representation to the estate of the deceased, the appellant in this suit, in the Chief Magistrate court Probate and Administration Ad litem Cause No 292 of 2022 for the purpose of proceeding with the appeal. As such, she argues that having obtained the letters of administration in respect of the estate of the appellant, it follows that she can rightfully be substituted.
7. The applicant further submits that the appellant died on 8th February 2019 and thus by operation of the law, the suit abated one year later, on 9th February 2020. The applicant further states that if the cause of action survives the deceased, a widow can reinstate the suit under Order 24 Rule 7 of the *Civil Procedure Rules*.

The Respondent's Submissions

8. The respondent submits that Order 24 Rule 7 of the *Civil Procedure Rules* requires the applicant to show that she was prevented by any sufficient cause from continuing with the suit. The respondent further argues that the applicant has not demonstrated or explained any cause that prevented her from continuing with the case from 8th February 2019, when the appellant passed away. The applicant's affidavit is completely silent on this issue.
9. The respondent cites the decision of *Republic v District Land Registrar Meru North District & another N'Nyaki Kimenyi ex parte N'Nyaki Kimenyi* [2015] eKLR and submits that the applicant is guilty of inordinate, unexplained and inexcusable delay of four (4) years as she has not demonstrated any sufficient cause that prevented her from continuing with the suit since the appellant died.
10. The respondent further relies on the case of *Alfred Wanjala Ekidaria (Deceased) v Patrick Sitati Walukhuchi & 3 others* [2021] eKLR and submits that the court should not exercise its discretion in the applicant's favour as she has not only not offered a good reason to warrant the court's discretion but she has not offered any reason at all. The respondent further contends that the applicant has not met the requirements of reviving a suit and it prays that the application be dismissed with costs.

Whether the applicant ought to be granted the orders sought.

11. Order 24 of the *Civil Procedure Rules* provides for the procedure to be adopted in the case of the death of a plaintiff. Rule 3 and 7 of the *Civil Procedure Rules* provides:-
 - 3(1) Where one of two or more plaintiffs dies and the cause of action does not survive or continues 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.



3(2) Where within one year no application is made under sub rule (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 that the Court may, for good reason on application extend the time.

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

7(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.

12. Therefore, for a court to exercise the discretion vested in it in favour of a person seeking to revive a suit that has abated, it must be satisfied that the applicant was prevented by a sufficient cause from continuing in the suit. This principle was demonstrated in *Rukwaro Waweru v Kinyutho Ritbo & another* (2015) eKLR where the court held:-

It is clear that the Court is given the discretion to extend time for substitution of parties and to revive a suit that has abated if sufficient cause is shown. This notwithstanding, precedent seems to suggest that this Court may not extend time once the suit against a deceased defendant has abated.

13. Similarly in the case of *Charles Mugunda v Attorney General* [2015] eKLR the court relied on the case of *Soni v Mohan Dairy* [1958] EA 58 and held that for an applicant to succeed in having the suit revived, he has to prove that there was sufficient cause that prevented him from seeking the substitution of a deceased litigant within the requisite period.

14. The Court of Appeal in the case of *Attorney General v Law Society of Kenya & another* [2013] eKLR explained sufficient cause as follows:-

Sufficient cause or good cause in law means:-

The burden placed on a litigant (usually by the 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 doubts in a judge's mind. The explanation should not leave unexplained gaps in the sequence of events.

15. The applicant states that the appellant died on 8th February 2019. Although she claims to have annexed a copy of the death certificate to her application, there is no copy of any death certificate annexed to this application. That notwithstanding, there is an order on record made by the court on 3rd December 2019, that ordered the appeal as abated when the respondent informed the court that the appellant passed away. By operation of the law, this suit abated twelve (12) months after the demise of the appellant, which is 8th February 2020. However, the law allows the applicant to revive the suit upon proving that she was prevented by sufficient cause from continuing the suit. The application was filed on 2nd September 2022, about three years from the demise of the appellant. The applicant has not given



reasons for delay in obtaining the limited grant and in filing this application. In fact, her supporting affidavit is completely silent on the cause of delay. In the absence of explanation for delay, the applicant is guilty of inordinate delay.

16. In the Court of Appeal case of *Rebecca Mijide Mungole & another v Kenya Power & Lighting Company Ltd & 2 others* [2017] eKLR the court found that the appellants did not show sufficient cause to warrant the suit to be revived and further that the appellants were guilty of inordinate delay. It is my considered view that the applicant is guilty of inordinate delay. As such, the court is inclined not to exercise its discretion in her favour for the reasons that no sufficient cause has been shown.
17. Consequently, the application dated 2nd September 2022 lacks merit and dismiss it with no orders as to costs.
18. It is hereby so ordered.

DELIVERED, DATED AND SIGNED AT NYERI THIS 20TH DAY OF APRIL, 2023.

F. MUCHEMI

JUDGE

RULING DELIVERED THROUGH VIDEOLINK THIS 20TH DAY OF APRIL, 2023

