



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

MILIMANI LAW COURTS

ELC CIVIL SUIT NO.84 OF 2016

MOSES MAINA NDEGWA.....PLAINTIFF/APPLICANT

-VERSUS-

AGNES WANGUI NGUNI.....1ST DEFENDANT

VICTOR NGUNI MACHARIA.....2ND DEFENDANT

EMBAKASI RANCHING CO. LIMITED.....3RD DEFENDANT

RULING

INTRODUCTION

1. Vide Application dated the 25th of May 2021, the Applicant has sought for the following Reliefs:

- i.(*Spent*)
- ii. *The Honorable Court be pleased to Review and/or set aside the orders issued on the 12th of May 2021 and Reinstate the Suit*
- iii. *Cost of this Application be cost in the cause.*

2. The subject Application is premised on the various grounds contained and/or enumerated at the foot of the application and same is further supported by the Affidavit of one Ambrose Waigwa, sworn on the 25th of May 2021.

3. Upon being served, with the Application herein, the second Defendant filed a Replying Affidavit on his own behalf and on behalf of the 1ST Defendant/Respondent and which Replying Affidavit was sworn on the 9th of July 2021.

DEPOSITIONS BY THE PARTIES

THE APPLICANT’S CASE

4 Vide Supporting Affidavit sworn on the 25th of May 2021, the Deponent thereto, namely, Ambrose Waigwa, has averred as hereunder:

The subject matter came up for Mention on the 22nd of March 2021, for purposes of taking directions pertaining to and/or concerning the Application dated the 8th of December 2020, which was in respect of substitution of the Plaintiff.

5. However, the Deponent further avers that on the said date, there was internet connectivity problems, which affected the Court and on various occasions, the Court would log out involuntarily and the problem continued up to and including around 12 noon.

6. The Deponent has further averred that owing to the internet connectivity issues, the Advocate on record for the Plaintiff, did not get to hear the date for the Notice to show cause and hence on the return date, which transpired to be the 12th of May 2021, the matter was called out and same was dismissed for want of prosecution, albeit, without the participation of the Counsel for the Plaintiff.

7. Be that as it may, the Deponent has averred that the original Plaintiff passed on, on the 6th of March 2019, and that following the death thereof, the estate of the Deceased has since procured and obtained letters of administration and therefore same are keen to substitute the Deceased Plaintiff and thereafter to proceed with the case.

8. It is the Deponent's further averment that on or about the 5th of March 2020, same filed an Application, whereby they sought for extension of time within which to substitute the estate of the Deceased Plaintiff.

9. However, the Deponent further avers that though the Application was scheduled to be heard on the 24th of March 2020, the **Covid-19 Pandemic** struck and the Honorable Chief Justice thereafter directed the closure of some Courts and scaling down of open Court hearings.

10. It was further the averment by the Deponent that later on, same managed to secure a date for hearing of the Application for substitution on the 9th of December 2020. However, the said Application, was never heard until the subject matter was dismissed on the 12th of May 2021, for want of prosecution.

11. Be that as it may, the Deponent of the Supporting Affidavit has averred that the estate of the Deceased Plaintiff has since procured and/or obtained Grant of letters of administration and therefore same are ready to substitute the Deceased Plaintiff and thereafter prosecute the subject matter.

12. In the premises, the Deponent has averred that it is therefore in the interest of justice that the subject Application be allowed and the Suit be revived for purposes of hearing and determination on merits.

13. It is further averred that unless the Suit is revived, the estate of the Plaintiff, now Deceased, shall be denied and/or deprived of their interest over and in respect of **LR.NO.NAIROBI/BLOCK 105/1617**, which is the Property in dispute herein.

1ST AND 2ND DEFENDANTS' CASE

14. On behalf of the said Defendants, the Replying Affidavit was sworn by Victor Nguni Macharia, who is the 2nd Defendant Respondent herein and in respect of which same has averred as hereunder;

15. The Plaintiff herein having died on the 6th of March 2019, it is averred that the Suit therefore automatically abated on the 6th of March 2020.

16. On the other hand, it is further averred that the Plaintiff's Advocate was properly informed of the date to show cause and in this regard, the Plaintiff's Advocates were aware of and/or knowledgeable of the date for the show cause.

17. Owing to the foregoing, it is averred that the problem of internet connectivity, which has been relied upon and/or alluded to by the Plaintiff's Advocate, as the excuse for not attending Court on the 12th of May 2021, is therefore not a genuine reason.

18. On the other hand, the Deponent has further averred that the subject Application has been brought pursuant to and under the wrong provisions of the law. Consequently, the Deponent has implored the Court to dismiss the Application.

19. Other than the foregoing, the Deponent has proceeded to and averred that the Suit herein lacks bonafide triable issues and therefore there is no basis upon which the same ought to be revived.

20. At any rate, the Deponent has averred that the Plaintiff and/or the estate of the Deceased Plaintiff, were granted time within which to substitute the Deceased Plaintiff, but same failed to undertake the substitution or at all. In this regard, it is averred that the current Application has been overtaken by Events.

21. Besides, the Deponent herein has also averred that the subject Application has been made with unreasonable delay, amounting to more than 2 (two) years and that no sufficient explanation has been offered and/or tendered.

22. On the other hand, it has also been averred that an action in relation to a Deceased's estate must be brought within a period of 12 (twelve) months from the date which the Deceased died. Consequently, the subject Application having been brought outside the twelve months, same is therefore legally untenable.

23. Notwithstanding the foregoing, the Deponent has proceeded to and averred that the subject Application contravenes the provisions of **Sections 27, 28 and 29 of the Limitations of Actions Act Chapter 22 Laws Of Kenya** and in this regard, the Applicant cannot invoke and rely on the provisions of the Civil Procedure Rules, 2010, to supersede the provisions of the substantive Act of Parliament.

24. Besides, the Deponent has also averred that the Applicant has also not availed evidence to show that same has obtained Grant of letters of administration as stipulated in the Limitation of Actions Act, Chapter 22 Laws Of Kenya. In this regard, the Defendants have thus contended that the Applicant has slept on his rights and Equity does not aid the Indolent.

25. Based on the foregoing, the Defendants have thus implored the Court to find and hold that the Application lacks merit and therefore same should be Dismissed.

SUBMISSIONS

26. The subject Application came up for hearing on the 6th of December 2021, whereupon the Court directed and/or ordered that same be canvassed by way of oral submissions.
27. Pursuant to and in line with the directions of the Court, the Advocates for the respective Parties tendered their short submissions for and against the Notice of Motion Application dated the 20th of May 2021.
28. On behalf of the Applicant, it was contended that though the Plaintiff passed on and/ or died on the 6th of March 2019, the estate of the Deceased Plaintiff commenced the process of taking out letters of administration. However, the process took longer than was expected.
29. It was the Applicant's further submission that when same realized that the letters of administration were taking longer than was expected, same filed an Application dated the 5th of March 2020, whereby same sought for extension of time within which to effect the substitution of the Deceased Plaintiff.
30. It was the Applicants' further submission that the said Application was caught up by the Covid-19 Pandemic, which caused the closure of some Courts and the scaling down of Court business in others.
31. Be that as it may, the Applicant further submitted that despite the delay to procure and obtain the Grant of letters of administration, the Applicant has since obtained same. Consequently, the Applicant is now ready to be substituted over and in respect of the estate of the Deceased Plaintiff.
32. Besides, the Applicant's Advocate has further submitted that this subject matter touches and/or concerns an interest in land, which is disputed between the estate of the Plaintiff and the 1st and 2nd Defendants, respectively.
33. In view of the foregoing, the Applicant's Advocates submitted that it would be appropriate for the Court to reinstate the subject suit and therefore to allow the subject matter to be disposed of on merits.
34. Finally, the Applicant submitted that the Court has jurisdiction to revive a suit, which has abated. Consequently, the Court was implored to invoke the inherent jurisdiction and to ensure that the ends of justice are met.
35. On their part, the Defendants herein opened their opposition to the subject Application by contending that the suit herein abated on the 6th of March 2020, and therefore there is no suit on which the Court can exercise discretion to substitute the Plaintiff.
36. It was the Defendants' further submission, that at any rate the subject Application has been brought under the wrong provisions of the law. In this regard, the Defendants have therefore sought that the subject Application be dismissed.
37. On the other hand, the Defendants' Counsel has further argued that the subject suit lacks bonafide and triable issues. Consequently, there is no basis upon which the suit can be reinstated.
38. Other than the foregoing, the Defendants' Counsel has also submitted that an action in relation to the estate of a Deceased person, must be brought within a period of twelve(12) months from the date on which the Deceased died.
39. In the premises, the Defendants' Advocate has therefore contended that the subject Application, which has been brought after two years, is therefore contrary to and/or in contravention of the provisions of the Limitations of Actions Act, Chapter 22 Laws Of Kenya.
40. Suffice it to say, when the Court inquired from the Defendants' Advocate as to which provisions of the Limitation of Actions Act supports the contention that an action in relation to a deceased estate must be brought within a period of twelve (12) months from the date of death, the Advocate was unable to pinpoint any.
41. On the other hand, the Defendants' Advocate further submitted that the subject Application is also contrary to and in contravention of the provisions of **Sections 27, 28 and 29 of the Limitations of Actions Act, Chapter 22 Laws Of Kenya**. In this regard, Counsel contended that the Applicant cannot now rely on the provisions of the Civil Procedure Rules, to defeat the provisions of an Act of Parliament.
42. Finally, the Defendants Advocate also submitted that the Applicant herein has also not shown any evidence that same has applied for and/or obtained Grant of letters of Administration, as stipulated in the Limitations of Actions Act, Chapter 22, Laws of Kenya.
43. As pertains to the foregoing submission, yet again, Counsel for the Defendants was at pains to point out which section of the Limitations of Actions Act prescribes for the Application and/or procurement of the Grant of letters of Administration.
44. Be that as it may, the Counsel for the Defendants, reiterated the contents of the Replying Affidavit sworn on the 9th of July 2021 and therefore implored the Court to dismiss the Application.

ISSUES FOR DETERMINATION

45. Having considered the Application dated the 25th of May 2021, the Supporting Affidavit thereto and the Replying Affidavit in opposition thereto, and having similarly considered the submissions made on behalf of the Parties, the following issues are Germane for determination:

i. *Whether the Dismissal of the Suit for want of prosecution on the 12th of May 2021, was a Mistake and/or Error apparent on the face of Records.*

ii. *Whether the Revival and/or reinstatement of a suit that has abated is captured under the provisions of Sections 27,28 and 29 of the Limitations of Actions Act Chapter 22 Laws Of Kenya.*

iii. *Whether the Court has Jurisdiction to revive a suit that has abated and if so whether sufficient cause has been established to warrant such revival.*

ANALYSIS AND DETERMINATION

ISSUE NUMBER ONE

Whether the Dismissal of the Suit for want of prosecution on the 12th of May 2021, was a Mistake and/or Error apparent on the face of Records.

46. From the record, the Advocate for the Plaintiff intimated to the Court that the Plaintiff herein died on the 6th of March 2019 and that the estate of the Deceased, was yet to appoint a legal administrator thereto. For clarity, that intimation was made to the Court on the 16th of October 2019.

47. On the other hand, come the 5th of March 2020, the Advocate for the Plaintiff pointed out to the Court that same had filed an Application seeking to substitute the Plaintiff with a legal administrator and the said Application was fixed for hearing before the Honorable Court on the 9th of December 2020.

48. However, on the 9th of December 2020, the Court ordered and/or directed that the Application dated the 5th of March 2020, to be mentioned on the 8th of March 2021. Nevertheless, there are no proceedings, which were taken on the 8th of March 2021.

49. To the contrary, the subject matter was mentioned before the Court on the 15th of March 2021, whereupon the Court fixed the matter for directions on the 22nd of March 2021.

50. Be that as it may, on the 22nd of March 2021, the Honorable Court in the absence of the Parties, proceeded to and fixed the matter for notice to show cause on the 12th of May 2021, on which date the suit herein was Dismissed for want of prosecution, albeit, in the absence of the Advocate for the Plaintiff or better still, the estate of the Deceased Plaintiff.

51. I have endeavored to reproduce the record of the Court, essentially to underline 2(two) critical issues, namely:

i. *The Court was already informed that the Plaintiff had died and/or passed on.*

ii. *An application for substitution of the Deceased Plaintiff had already been filed and same was pending.*

52. To the extent that the Court was already seized of the fact that the Plaintiff had passed on and there was indeed an Application for substitution of the Deceased Plaintiff, was it still possible for the Court to dismiss the Suit for want of prosecution?

53. On the other hand, in the presence of a pending interlocutory Application, namely an Application for substitution, can the Court dismiss a suit for want of prosecution, without dealing with the pending Application beforehand?

54. In my humble view, where a Party to the suit has passed on and the statutory twelve months for substitution of the deceased party, in this case, the Plaintiff has passed, the suit automatically abates.

55. For the avoidance of doubt, the abatement of the suit is an automatic legal process and does not require an order of the Court. However, it has variously been held that an order for dismissal on account of abatement ought to be minuted for record and coherence.

56. Be that as it may, where a suit has abated, the suit becomes non-existent in the eyes of the Law. Consequently, such a suit is no longer available and cannot be a candidate for Dismissal for want of prosecution under the provisions of **Order 17 of the Civil Procedure Rules, 2010.**

57. On the other hand, it is also common ground that by the time of making the order for dismissal for want of prosecution, the attention of the Court was not drawn to the existing Applications for substitution of the Deceased Plaintiff. For clarity, Counsel for the Defendants, who appeared before the Court, was more interested in dismissal of the suit for want of prosecution, regardless of the pending Applications.

58. I beg to point out that the Order for dismissal of the suit for want of prosecution, was made by error and/or informed by mistake, on the part of the Court, without having taken into account the legal import and tenor of an abatement. Simply put, the suit had long abated by operation of the Law and thus same could not be Dismissed for want of Prosecution, whatsoever.

59. With Profound respect, the Error and/or mistake, that I have endeavored to point out is evident and/or apparent on the face of Record and therefore same lends itself to Review, within the purview of the provisions of **Order 45 Rule 1 of the Civil Procedure Rules, 2010.**

60. In any event, I am also minded to refer to and adopt the Decision in the case of National Bank of Kenya Limited versus Ndungu Njau [1997] eKLR where the Court Of Appeal stated as hereunder;

“ A review may be granted whenever the court considers that it is necessary to correct an apparent error or omission on the part of the court. The error or omission must be self evident and should not require an elaborate argument to be established. It will not be a sufficient ground for review that another Judge could have taken a different view of the matter. Nor can it be a ground for review that the court proceeded on an incorrect exposition of the law and reached an erroneous conclusion of law. Misconstruing a statute or other provision of law cannot be a ground for review.”

61. On the other hand, it is also important to take cognizance of the decision in the case of John Peter Kamau Ruhangi vs Kenya Reinsurance Corporation [2012] eKLR where the Court Of Appeal stated as hereunder;

“In this case we are mainly concerned with review on the ground of error apparent on the face of the record. As Mr. Machira correctly submitted, an error apparent on the face of the record is not one which is to be established by a long drawn process of reasoning or on points where there could possibly be two opinions.

This Court made that quite clear in the case of Nyamogo & Nyamogo Advocates vs Kogo [2001] 1 EA 173. An error apparent on the face of the record includes an omission which must also be glaring and self evident. It is not one that requires an elaborate argument or serious scrutiny of the record to be established-- National Bank of Kenya Ltd. Vs Ndungu Njau, civil Appeal No. 211 of 1996 (unreported).

As was stated by the Nigerian Court of Appeal in the case of Peter Cheshe & Another Vs Nicon Hotels Ltd. & Another, Appeal No. CA/A/83/M/98 that an error on the face of the record is one that can be corrected under the slip rule whose jurisdiction is limited to correcting errors, mistakes or omissions in the ruling or judgment and does not permit granting orders not made or extending the scope of.”

62. Based on the foregoing decisions, I am minded to find and hold that the dismissal of the Plaintiff’s suit for want of prosecution, on the face of abatement was an error and/or mistake, which was and is self-evident, apparent and glaring.

63. Owing to the foregoing, it is therefore necessary and in the interest of justice to realign the Court record with the various proceedings that had hitherto to be taken, and/or made.

64. Unless the foregoing is done, there is evident conflict and/or contradiction between the Court record and the order dismissing the subject suit for want of prosecution. In a nutshell, I answer issue number one in the affirmative.

ISSUE NUMBER TWO

Whether the revival and/or reinstatement of a suit that has abated is captured under the provisions of Sections 27,28 and 29 of the Limitations of Actions Act Chapter 22 Laws Of Kenya.

65. The Advocate for the Defendants, made heavy submissions to the effect that an action in relation to a deceased’s estate must be brought within a period of twelve (12) months from the date on which the Deceased died. For this submission, the Advocate relied on the Provisions of the Limitation of Actions Act.

66. On the other hand, the Advocate further submitted that the Applicant cannot rely on the provisions of the Civil Procedure Rules 2010, to supersede the express provisions of Sections 27, 28 and 29 of the Limitation of Action Act Chapter 23 Laws of Kenya, whereas the provisions of the latter arise from an Act of Parliament and are therefore superior to the procedural laws.

67. I have on my own perused the provisions of Sections 27, 28 and 29 of the Limitations of Actions Act, Chapter 22 Laws of Kenya, to be able to understand and appreciate the crux of the Defendants’ Advocates submissions.

68. Contrary to the Defendants’ Advocates submissions, the provisions that have been alluded to, do not concern revival of a suit that has abated following the death of a Party to the suit, like in the instant matter.

69. For the avoidance of doubt, it may just be necessary to reproduce the said provisions, to enable the Counsel to appreciate the import thereof. In this regard, same are reproduced as hereunder;

“27. Extension of limitation period in case of ignorance of material facts in actions for negligence, etc.

(1) Section 4(2) does not afford a defence to an action founded on tort where—

(a) the action is for Damages for Negligence, nuisance or breach of duty (whether the duty exists by virtue of a contract or of a written law or independently of a contract or written law);

(b) the damages claimed by the plaintiff for the negligence, nuisance or breach of duty consist of or include damages in respect of personal injuries of any person; and

(c) the court has, whether before or after the commencement of the action, granted leave for the purposes of this section; and

(d) the requirements of subsection (2) are fulfilled in relation to the cause of action.

(2) The requirements of this subsection are fulfilled in relation to a cause of action if it is proved that material facts relating to that cause of action were or included facts of a decisive character which were at all times outside the knowledge (actual or constructive) of the plaintiff until a date which—

(a) either was after the three-year period of limitation prescribed for that cause of action or was not earlier than one year before the end of that period; and

(b) in either case, was a date not earlier than one year before the date on which the action was brought.

(3) This section does not exclude or otherwise affect—

(a) any defence which, in an action to which this section applies, may be available by virtue of any written law other than section 4(2) of this Act (whether it is a written law imposing a period of limitation or not) or by virtue of any rule of law or equity; or

(b) the operation of any law which, apart from this section, would enable such an action to be brought after the end of the period of three years from the date on which the cause of action accrued. [L.N. 228/1973.]

28. Application for leave of court under section 27.

29. Provision where injured person has died;

(1) In relation to an action to which section 27 of this Act applies, being an action in respect of one or more causes of action surviving for the benefit of the estate of a deceased person by virtue of section 2 of the Law Reform Act (Cap. 26), section 27 of this Act and section 28 of this Act shall have effect subject to subsections (4) and (5) of this section.

(2) Subsections (1), (2) and (3) of section 27 of this Act and section 28 of this Act shall have effect, subject to subsections (4) and (6) of this section, in relation to an action brought under the Fatal Accidents Act (Cap. 32) for damages in respect of a person's death, as they have effect in relation to an action to which section 27 of this Act applies.

(3) In the following provisions of this section, and in sections 27 and 28 as modified by those provisions, "the deceased" means the person referred to in subsection (1) or subsection (2), as the case may be.

(4) Section 27(1) of this Act shall not have effect in relation to an action falling within subsection (1) or subsection (2) of this Act, unless the action is brought before the end of twelve months from the date on which the deceased died.

(5) For the purposes of the application of subsection (2) of section 27 of this Act to an action falling within subsection (1) or subsection (2) of this section—

(a) any reference in the said subsection (2) to the plaintiff shall be construed as a reference to the deceased; and

(b) the requirements of the said subsection (2) shall be taken to be fulfilled in relation to a cause of action if either the matters specified in that subsection (as modified by paragraph (a) of this subsection) are proved or it is proved that the material facts relating to that cause of action were or included facts of a decisive character which at all times until his death were outside the knowledge (actual or constructive) of the deceased, and any reference to the requirements of the said subsection (2) shall, in relation to an action falling within subsection (1) or subsection (2) of this section, be construed as a reference to the requirements of the said subsection (2) as modified by this subsection.

(6) In the application of sections 27, 28 and 29 of this Act to an action brought under the Fatal Accidents Act—

(a) any reference to a cause of action to which an action relates shall be construed as a reference to a cause of action in respect of which it is claimed that the deceased could (but for his death) have maintained an action and recovered damages; and

(b) any reference to a cause of action shall be construed as a reference to establishing that the deceased could (but for his death) have maintained an action and recovered damages in respect thereof."

70. My reading of the foregoing provisions of the law drives me to the conclusion that same relate to and/or concern instances where a claimant can file and/or commence a suit and/or an action in tort, long after the expiry of the limitation period, albeit upon the discovery of exceptional and material facts which were not within the knowledge of the claimant.

71. To the contrary, what is before the Court is an Application not for extension of time to file suit out of time, but one for Revival or Reinstatement of a suit, which has abated an extension of time within which to substitute the Deceased Plaintiff.

72. Clearly, there is a serious misapprehension on the part of Counsel for the Defendants, as pertains to and/or concerns the import, tenor and applicability of the said Sections to the subject matter.

73. On my part, I have no difficulty in pronouncing myself that the said sections, which have been relied upon by the Counsel for the Defence, are indeed irrelevant and inapplicable.

74. On the other hand, Counsel for the Defendants also placed undue emphasis on the issue that no evidence had been supplied that the Applicant had already applied for and obtained Grant of letters of administration as stipulated under the Limitation of Actions Act Chapter 22 Laws Of Kenya.

75. Unfortunately, I must point out to Counsel for the Defendants that the Grant of letters of administration, in its various forms, is provided for under the provisions of the Law of Succession Act, Chapter 160 Laws Of Kenya, and not otherwise.

76. Perhaps, it is imperative to draw the Counsel's attention to the provisions of **Sections 79, 80, 81 and 82 of the Law of Succession Act, Chapter 160 Laws Of Kenya**, which deals with instances concerning Grant of letters of administration.

77. Be that as it may, my answer to issue number two is in the negative.

ISSUE NUMBER THREE

Whether the Court has Jurisdiction to revive a suit that has abated and if so whether sufficient cause has been established to warrant such revival.

78. Where a suit has abated and/or been dismissed on account of abatement, the Honorable Court is vested with the requisite jurisdiction to revive and/or reinstate such a suit, upon the Application of the Legal Representative of the estate of the Deceased.

79. However, before making an order for such revival and/or reinstatement, it is incumbent upon the Court to authenticate whether the Legal Representative has placed before the Court sufficient cause, basis and/or explanation, as to why the action was not taken within the statutory duration.

80. Nevertheless, it must also be noted that the discretion of the Court when dealing with an Application for revival or reinstatement of the suit, is a judicial discretion to be exercised, based on the evidence availed and the general circumstances of the case, taking into account the interest of justice and need to ensure that disputes are determined on merits and not otherwise.

81. As pertains to the subject matter, it is evident that various attempts were made by filing various Applications, inter alia, the Application dated the 5th of March 2020 and the 8th of December 2020, respectively.

82. It is also important to note that the said Applications were taken cognizance of by the Court, but same were never determined and/or disposed of one way or the other.

83. Notwithstanding the foregoing, the Applicant has also tendered evidence to show that the delay in mounting the Application for substitution of the Deceased Plaintiff was neither deliberate nor intentional. For clarity, it has been pointed out that same was occasioned by the length of time taken by the beneficiaries of the estate of the Deceased Plaintiff to get their house in order.

84. In view of the foregoing, I am persuaded that sufficient cause and/or basis, has indeed been established and/or laid out.

85. In the premises, I am persuaded that this Court has jurisdiction to revive and/or reinstate a Suit that has abated and similarly, that sufficient cause has been established to warrant such reinstatement.

86. In support of the foregoing observation, I adopt and rely on the decision in the case of **Said Sweilem Gheithan Saanum v Commissioner Of Lands (being sued through Attorney General) & 5 others [2015] eKLR** where the Honorable Court of Appeal stated as hereunder;

“Thirdly, the legal representative of the deceased plaintiff may apply for the abated suit to be revived after satisfying the court he was prevented by “sufficient cause” from continuing with the suit. The effect of an abated suit is that it ceases to exist in the eye of the law. The abatement takes place on its own force by passage of time, a legal consequence which flows from the omission to take the necessary steps within one year to implead the legal representative of the deceased plaintiff.”

FINAL DISPOSITION

87. Having dealt with all the enumerated issues for determination, it is now appropriate to render the final dispositive Orders.

88. In the premises, I now make the following Orders:

- i. *The Application dated the 25th May 2021, be and is hereby allowed in terms of Prayer 2 thereof.*
- ii. *The Orders made on the 12th of May 2021, Dismissing the suit for want of prosecution be and are hereby set aside.*
- iii. *The Suit be and is hereby revived and reinstated.*
- iv. *The Legal Administrator of the Estate of the Deceased be and is hereby substituted in place of the Deceased Plaintiff.*
- v. *The Legal Administrator shall now be deemed and is hereby constituted as the Plaintiff in place of the Deceased Plaintiff.*
- vi. *The Complaint herein shall be amended within 14 days to reflect the substitution of the Deceased Plaintiff by the Legal Administrator thereof and the Amended Complaint to be served upon the rest of the Parties, in accordance with the provisions of Order 1 Rule 10(4) of the Civil Procedure Rules, 2010.*
- vii. *The Defendants be and are hereby granted Leave to amend the Statement of Defence, if any, within 14 days from the date of service of the Amended Complaint.*
- viii. *The substituted Plaintiff shall pay to and in favor of the Defendants thrown away costs assessed and certified in the sum of Kenya Shillings 20,000 only within 14 days.*
- ix. *Either Parties are at liberty to apply.*

89. It is so Ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 16TH DAY OF DECEMBER 2021.

HON. JUSTICE OGUTTU MBOYA

JUDGE

ENVIRONMENT AND LAND COURT.

MILIMANI.

In the Presence of;

June Nafula Court Assistant

Ms. Wanyoike h/b for Mrs. Ndungu for Applicant.

Mr. Owang for the 1st and 2nd Defendants/Respondents.