



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

ORIGINATING SUMMONS NO.21 OF 2019

STEPHEN MWAMBA PLAINTIFF (Deceased)

VERSUS

KENNON MWITI MBAE (Sued as the legal representative of the estate of

SILAS JUDAH MBAE (Deceased)1ST DEFENDANT

ZAVERIO KIAMBI MWAMBA 2ND DEFENDANT

AND

CONSOLATA KANUNGO MWAMBA &

GREGORY KIMATHI MWAMBA.....APPLICANT/LEGAL REPRESENTATIVES

RULING

1. By an application dated **7.7.2020** the applicant seeks to have the suit revived and the applicants to be made parties in place of the plaintiff who passed on **18.5.2019**.
2. The application is based on the grounds on its face and the supporting affidavit sworn on **7.7.2020**.
3. The reasons given are that the plaintiff brought the originating summons dated **18.4.2019** seeking for the orders of adverse possession over **L.R No. Kiirua/Naari/5257, 5258, 5259, 5260, 5261 and 5262**.
4. It is averred the aforesaid plaintiff passed on **18.5.2019** after which the intended parties sought and obtained letters of administration ad litem on **18.6.2020**. Under **Order 24 rule 3 (1)**, when a party has passed on and a cause of action survives, an application to substitute has to be made within a year otherwise the suit abates.
5. Since the deceased passed on on **18.5.2019** an application to substitute had to be made before **18.5.2020**. The death certificate was issued on **16.7.2019** but the application for grant was only lodged on **11.3.2020** which was less than two months before the suit abated. The reason given is Covid19. The pandemic was only declared on or about **15.3.2020** and courts operations scaled down in April 2020. There is therefore no explanation given why the applicants did not file the application for the letters of grant and substitution in 2019.
6. **Order 24 rule 3 (2)** provides that the court may for good reasons and on an application extend the time for the revival and or joinder of parties. A party under **Order 24 rule 7 (2)** must show sufficient cause which is reasonable and plausible so as to persuade the court to believe that the explanation given is not only true but justifies the exercise of judicial discretion in favour of the applicant.
7. In **Rebecca Mijide Mungole & Another v Kenya Power & Lighting Company Ltd & 2 others [2017] eKLR** the Court of Appeal outlined the sequence of events where the legal representative of the deceased is not joined within a year.
8. The court went on to say that it was only after time had been extended that a legal representative can have the capacity to apply to be made a party. The court held **Order 24** must be construed by reading it as a whole and the sequence in which it is framed must be followed without short circuiting it. Consequently without the time being extended, application for the revival or joinder of a party cannot be made at all.
9. In instant application there is no prayer for the extension or enlargement of time to apply for the revival and joinder of parties. Whereas an omnibus application can be made the applicant herein have only sought for two and not three prayers.

10. My finding therefore is the application is incompetent to seek for the revival or joinder when the prayer for more time to apply has not been sought and obtained.

11. The same is dismissed with costs.

DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS AT MERU THIS 15TH DAY OF DECEMBER, 2021

In presence of:

No appearance for parties

Court Assistant - Kanau

HON. C.K. NZILI

ELC JUDGE