



REPUBLIC OF KENYA



**KENYA LAW**  
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**Oloo v Sweta & 5 others (Environment & Land Case  
15 of 2023) [2025] KEELC 4739 (KLR) (26 June 2025) (Ruling)**

Neutral citation: [2025] KEELC 4739 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KISUMU  
ENVIRONMENT & LAND CASE 15 OF 2023**

**E ASATI, J  
JUNE 26, 2025**

**BETWEEN**

**JOHN BRUNO OLOO ..... PLAINTIFF**

**AND**

**JOSEPH AGINGU SWETA ..... 1<sup>ST</sup> DEFENDANT**

**COUNTY COUNCIL OF KISUMU ..... 2<sup>ND</sup> DEFENDANT**

**DISTRICT LAND REGISTRAR ..... 3<sup>RD</sup> DEFENDANT**

**HON. ATTORNEY GENERAL ..... 4<sup>TH</sup> DEFENDANT**

**RANA AUTO SELECTION LIMITED ..... 5<sup>TH</sup> DEFENDANT**

**DIAMOND TRUST BANK KENYA LTD ..... 6<sup>TH</sup> DEFENDANT**

**RULING**

1. This ruling is in respect of the Notice of Motion application dated 11<sup>th</sup> February, 2025 brought pursuant to the provisions of Order 24 Rule 7(2), Order 1 Rule 10 and Order 49 Rule 7(1)(b) of the *Civil Procedure Rules* section 1A, 1B, 3A and 3B of the *Civil Procedure Act* and Article 159 of *the Constitution* of Kenya 2010. The Applicant seeks for orders that;
  - a. The Plaintiff's suit against the Defendants which abated as a consequence of the death of the Plaintiff be revived.
  - b. Upon revival of the suit, the Plaintiff be substituted and the plaint be amended accordingly.
  - c. Costs of the application be provided for.
2. The application was based on the grounds that John Bruno Oloo, the Plaintiff died on 14<sup>th</sup> August, 2015 but the cause of action survived the Plaintiff. That Ian David Oloo was on 18<sup>th</sup> May, 2017



- appointed the administrator of the estate of the Plaintiff. That the suit abated because the estate of deceased had no administrator until the appointment of the Applicant Ian David Oloo on 18<sup>th</sup> May, 2017.
3. The application was supported by the contents of the Supporting Affidavit and the annexure thereto.
  4. The application was opposed by the 1<sup>st</sup> Respondent (Defendant) vide the Grounds of Opposition dated 28<sup>th</sup> March, 2024 and by the 5<sup>th</sup> Defendant vide the averments in the Replying Affidavit sworn on 25<sup>th</sup> February, 2025 and Further Affidavit sworn on 13<sup>th</sup> March, 2025 by one Sultan Ali Khan.
  5. The Respondents' case is that the application has been brought after prolonged delay of about 8 years which delay has not been explained.
  6. The application was heard by way of oral submission.
  7. It was submitted on behalf of the Applicant that after the administrator had been appointed, the court file kept on disappearing and this cause the delay. That there is correspondence to show this. That the file had to be transferred from the High Court to the Environment and Land Court. That Order 24 of the *Civil Procedure Rules* allows revival of abated suit where there is sufficient reason. Counsel urged the court to administer justice without undue regard to procedural technicalities.
  8. That leave to file the application was granted on 28<sup>th</sup> February, 2024. That delay was caused by circumstances beyond the Applicant's control.
  9. It was submitted on behalf of the 1<sup>st</sup> Defendant that the Applicant has not sought leave to bring the application out of time. Counsel relied on the case *Attorney General v Law Society of Kenya* (2013)eKLR and submitted that the burden is on the Applicant to show the sufficient cause. That the cause must be logical, reasonable and convincing. Counsel also relied on the case of *Housing Finance Company of Kenya Limited v Muriu* (2024) eKLR where the court held that 11 years delay was such a long time and amounted to inordinate delay.
  10. On behalf of the 5<sup>th</sup> Defendant, Counsel relied on the contents of the Replying Affidavit and submitted that the application was filed 8 years after the suit abated. That there has been on explanation for the delay.
  11. Counsel relied on the case of *Said Swailem v Commissioner of Lands* [2025]eKLR where the court dismissed an application for revival of a suit after 9years delay. That revival of a suit cannot be allowed as a matter of right. That there is no prayer for extension of time and that this contravenes the provisions of Order 24(3) *Civil Procedure Rules*. That Article 159 was not designed to throw away the rules of procedure. Counsel urged the court to dismiss the application.
  12. I have considered the application and the replies thereto.
  13. There is no dispute that the Plaintiff did pass on in the pendency of the suit, that the cause of action survived him and that the Applicant is the Administrator of the estate of the deceased.
  14. The applicant has explained the reasons for the delay in his Further affidavit sworn on 5<sup>th</sup> March 2025 and annexed documents in support thereof. I find that the Applicant has shown sufficient cause to warrant revival of the suit.
  15. The Respondents have not demonstrated prejudice that will be occasioned to them if the application is allowed.
  16. The application has merit. It is hereby allowed as follows: -



- i. The deceased's suit against the Defendants which abated is hereby revived.
- ii. The deceased is hereby substituted by the applicant herein and the applicant to amend his pleadings accordingly within 30 days hereof.
- iii. Costs to the 1<sup>st</sup> and 5<sup>th</sup> Defendants.

Orders accordingly.

**RULING DATED AND SIGNED AT KISUMU, READ VIRTUALLY THIS 26<sup>TH</sup> DAY OF JUNE, 2025 THROUGH MICROSOFT TEAMS ONLINE APPLICATION.**

**E. ASATI**

**JUDGE.**

In the presence of:

Maureen: Court Assistant.

Ogolla for the Plaintiff/Applicant.

Siwolo for the Defendant/Respondent.

